

USNA INSTRUCTION 1610.3F CHANGE TRANSMITTAL 2

From: Superintendent

Subj: HONOR CONCEPT OF THE BRIGADE OF MIDSHIPMEN

Encl: (1) Training Summary of Changes pages i, ii, iii and Record of Changes page iv  
(2) Reprinted page 1-1 and revised pages 1-2 through 1-5  
(3) Revised pages 2-1 through 2-8  
(4) Revised page 3-1 and reprinted page 3-2  
(5) Revised page 4-1 through 4-15  
(6) Reprinted page 5-1 and revised page 5-2  
(7) Revised Appendix B  
(8) Revised Appendix D  
(9) Reprinted pages 3,5, and 10 and revised pages 4,6, and 9 of Appendix F  
(10) Reprinted page 1 and revised page 2 and 3 of Appendix G

1. Purpose. To publish change 2 to subject instruction.
2. Action. Make the following procedural and editorial changes to subject instruction.
  - a. Insert enclosure (1) before Chapter 1.
  - b. Replace pages 1-1 through 1-4 with enclosure (2).
  - c. Replace pages 2-1 through 2- 7 with enclosure (3).
  - d. Replace pages 3-1 and 3-2 with enclosure (4).
  - e. Replace pages 4-1 through 4-14 with enclosure (5).
  - f. Replace pages 5-1 and 5-2 with enclosure (6).
  - g. Replace Appendix B with enclosure (7).
  - h. Replace Appendix D with enclosure (8).
  - i. Replace Appendix F pages 3 and 4, 5 and 6, and 9 and 10 with enclosure (9).
  - j. Replace Appendix G with enclosure (10).
  - k. Make pen and ink annotation to instruction cover to read: USNAINST 1610.3F  
17 March 1994 w/CH-I & CH-2
3. Cancellation. When the required action has been taken.

//s//  
J. R. RYAN

Distribution: C-I

USNA INSTRUCTION 1610.3F CHANGE TRANSMITTAL 1

From: Superintendent

Subj: HONOR CONCEPT OF THE BRIGADE OF MIDSHIPMEN

Encl: (1) Revised pages 1-3 and 1-4  
(2) Revised page 2-4  
(3) Revised page 2-6  
(4) Revised page 4-14  
(5) Revised page 5-2

1. Purpose: To publish change 1 to subject instruction.
2. Action: Make the following changes to subject instruction.
  - a. Pages 1-3 and 1-4. Replace pages 1-3 and 1-4 with enclosure (1).
  - b. Page 2-4. Replace page 2-4 with enclosure (2).
  - c. Page 2-5, para 0212d. Line through: "by the Character Development Officer." Change the next sentence to read: "The chair will coordinate with the Ethics Advisor to determine the procedure to be used to fill any vacancies in the Honor Staff."
  - d. Page 2-6. Replace page 2-6 with enclosure (3).
  - e. Page 2-7, para 0216. Delete the entire paragraph.
  - f. Page 2.7, para 217. Renumber paragraph to 216.
  - g. Page 4-14. Replace page 4-14 with enclosure (4).
  - h. Page 5-2. Replace page 5-2 with enclosure (5).
3. Cancellation: When the required action has been taken.

//s//  
J. R. Ryan

Distribution C-1

USNA INSTRUCTION 1610.3F

From: Superintendent

Subj: HONOR CONCEPT OF THE BRIGADE OF MIDSHIPMEN

1. Purpose. To issue the Honor Concept of the Brigade of Midshipmen.
2. Cancellation. USNAINST 1610.3E.
3. Action. This instruction is effective for all honor matters, including violations which occur on or after this date.

//s//  
T. C. Lynch

Distribution:

C-1 (Comdt's Distribution List)

12 Additional copies for Co Ofcrs (1-36)

## TRAINING SUMMARY OF CHANGES

The following is a summary of the changes implemented by Change 2 to USNAINST 1610.3F, the Honor Concept of the Brigade of Midshipmen.

FRONT MATTER

Adds List of Effective Pages and Change Record.

CHAPTER 1

- a. Revised to clarify what plagiarism is and to use the “reasonable midshipman” standard to determine if plagiarism has occurred.
- b. Revised to include leaving a false impression or attempting to deceive as a part of being guilty of lying.
- c. Revised to clarify intent of committing an honor offense and specifically includes the possession of a false ID as a violation of the Honor Concept.
- d. Revised to ensure a person initially discussing a possible offense does not lead a midshipman to believe he is being counseled, before the accuser has made that decision. When a midshipman believes he is being counseled, he may volunteer information under the auspices of counseling that he may not have volunteered, given his right to remain silent, if he felt he was being accused.
- e. Revised to clarify that the 21 day rule only applies to accusations.
- f. Revised to clarify that a midshipman must admit to an offense for counseling to be used.
- g. Revised to clarify the purpose and handling of documented counseling.
- h. Revised to clarify when and how a counseling sheet can be forwarded for investigation as an accusation. As rewritten, the Honor Concept now requires the Chair to consult with the Ethics Advisor and counselor prior to forwarding counseling for investigation, and further defines when such action would be appropriate. Additionally, a procedure is provided to exclude statements made during counseling from consideration as evidence.

CHAPTER 2

- a. Revised to allow for Board Members to attend Commandant’s Hearings.
- b. Revised to shift the duty of informing faculty and coaches of Honor Board times to the Academic Liaison.
- c. Revised to have Battalion Officer approve the Battalion Honor Representative.
- d. Revised to clarify that the Brigade Honor Staff will be considered at the striker selection board with the other Brigade strikers.
- e. Revised to add administration of the Honor Remediation Program to the Character Development Officer’s responsibilities.
- f. Revised to better describe the job that the Battalion Honor Representative currently does.
- g. Paragraph 210, Revised Company Honor Representative duties to remove inference that there are 3/c and 4/c honor representatives.
- h. Revised Paragraph 211 to reflect that the 15 Brigade Investigating Officers will be a combination of 1/c and 2/c with no specific class quotas.

### CHAPTER 3

Revises privacy right to state that the Academy will not respond to public inquiries vice all external inquiries to allow for official government access such as security investigations.

### CHAPTER 4

- a. Revised to include a notification of potential financial responsibilities when a midshipman is notified of an accusation as required by 10 U.S.C. 2005.
- b. Revised to shift the responsibility of notifying the accused's chain of command to the Vice Chair for Investigations.
- c. Revise to have the Ethics Advisor review charges vice the Legal Advisor.
- d. Revised to clarify when a midshipman knowingly pleads guilty, the definition of "knowing" requires the accused to meet all of the elements of the offense including intent.
- e. Revised to require the Ethics Advisor to summarize prior offenses and recommend a disposition when a case is forwarded to the Commandant.
- f. Revised to allow members of the Honor Board to attend the Commandant's hearing.
- g. Revised to allow the Commandant to recommend reevaluation/readmittance in accordance with SECNAVINST 1531.1B. Additionally adds this option for the Superintendent.
- h. Revised to include action for a midshipman who fails in remediation or probation.
- i. Revised to adjust the time line for case processing. Increases the investigation time to 2 weeks and the transcription time to 2 weeks.
- j. Revised to allow for release of case information for security investigations.
- k. Revised to allow for continuing an investigation on a midshipman who is readmitted after being separated with a pending honor case.
- l. Revised to clarify the purpose of Battalion Honor Counseling. The presiding officer, members present, and goal of the board are included.
- m. Reference to the Commandant's Legal Advisor has been changed throughout to a designated Legal Advisor to allow for use of the Character Development Legal Advisor in this role.

### CHAPTER 5

Revised to include a discussion on electronic media.

### APPENDIX B

- a. Revised the Formal Counseling form to clarify that a midshipman must admit to an offense during counseling and now include the printed name, company (or department) and alpha of both the accuser and accused.

### APPENDIX D

Revised to add statements regarding financial responsibility.

APPENDIX F

Revised to add statements regarding financial responsibility.  
Revised to include revised wording change {last paragraph) page 6.

APPENDIX G

Revised to add statements regarding financial responsibility.



## CHAPTER 1

### THE HONOR CONCEPT

#### 0101. THE HONOR CONCEPT

“Midshipmen are persons of integrity: They stand for that which is right.”

- a. They tell the truth and ensure that the full truth is known. They do not lie.
- b. They embrace fairness in all actions. They ensure that work submitted as their own is their own, and that assistance received from any source is authorized and properly documented. They do not cheat.
- c. They respect the property of others and ensure that others are able to benefit from the use of their own property. They do not steal.

**0102. BACKGROUND.** The Honor Concept has lasting simplicity. It was developed by midshipmen in 1951 to enable them to maintain their own highest ethical standards. It works only if the Brigade understands and commits to it. The Concept is simple, yet its spirit is broad and covers all facets of a midshipman’s life subsequent to taking the Oath of Office as a midshipman. The Concept, as the minimum standard of honor for a midshipman, forms the link to the high standards demanded of Naval Officers in a life of service.

**0103. PURPOSE.** The Honor Concept represents the minimum standard for midshipmen. Honor, personal integrity, and loyalty to the service, its customs and its traditions, are fundamental characteristics essential to a successful naval officer. Midshipmen unable to conduct themselves in a manner indicating the highest standards of honesty and integrity may not be fit to hold a commission in the Naval Service and may jeopardize their privilege of being a member of the Brigade of Midshipmen. The offenses of lying, cheating, and stealing are intolerable in the Brigade, and may subject a perpetrator to separation from the Naval Academy.

#### 0104. PRECEPTS

- a. Midshipmen are presumed to be honorable.
- b. Midshipmen’s statements and actions must always represent the complete truth.

**0105. DEFINITIONS**

a. Lying: To state an oral or written untruth with the intent to deceive. It is a lie to knowingly misrepresent the true situation or to deceive by withholding, omitting or subtly wording information in such a way as to leave an erroneous or false impression of the known true situation. The misrepresentation may be either by word or by deed.

b. Cheating: To knowingly use unauthorized assistance in submitted work as one's own efforts or to knowingly submit another's work or ideas, claiming them as one's own by not giving proper reference to that work. It is also cheating to derive an unfair advantage by one's actions.

(1) Assistance: Giving or receiving assistance is allowed and encouraged on homework assignments unless prohibited by the instructor. Giving or receiving assistance on individual assignments, other than homework, is permitted only when a midshipman's instructor specifically allows it.

(2) Proper documentation is required for all source material as discussed in the individual course policy statement which will be provided and explained by each instructor during the first session of each course. Ref: The Modern Language Association of America (standards and rules to be followed when referencing source material). If a reasonable midshipman would consider the act in question plagiarism, then claiming ignorance of the proper citation rules is not an excuse for cheating.

c. Stealing: Wrongfully taking, obtaining or withholding property or anything of value from the possession of the true owner with the intention of depriving the owner of its use or possession for any period of time. This includes fraudulently obtaining services (for example, telephone services).

**0106. INTENT**. To be guilty of lying, cheating, or stealing, an accused must have the necessary state of mind. For lying, one must have intended to deceive or leave a false impression by withholding or subtly wording information. For cheating, one must have intended to use unauthorized assistance, to represent another's work as one's own, or to otherwise gain an unfair advantage. For stealing, one must have intended to deprive the owner, either temporarily or permanently, of the use or possession of the property. The midshipman need not intend to commit an honor violation, but only complete the action with the state of mind described.

**0107. ATTEMPTING. SOLICITING. OR AIDING THE COMMISSION OF A OFFENSE**

a. It is a violation of the Honor Concept to attempt to lie, cheat or steal; or to solicit or assist any other person to lie, cheat or steal.

b. An attempted offense is an act done with the intent to commit an offense under the Honor Concept. The act must be more than the mere preparation to commit the

offense, but rather must tend to carry out or complete the basic offense of lying, cheating or stealing. The specific intent required is that of the attempted offense; the accused need not to violate the Honor Concept. Possession of a false identification involves, at some point, obtaining a false identification. This is considered lying under the Honor Concept. False identifications include altered personal identifications and use of another person's legitimate identification.

c. Solicitation consists of any statement, oral or written, or any other act or conduct intended as a serious request or advice to lie, cheat or steal. The solicited offense need not be committed.

d. Aiding in the commission of an honor offense consists of assisting or encouraging the active perpetrator of an honor offense, and sharing the intent of that perpetrator. The intent required is the same as for the active perpetrator. Mere presence at the scene of the offense does not constitute an offense. Failure to prevent the commission of an offense is not an honor offense unless the noninterference was designed to operate and did operate as an encouragement to, or protection of, the perpetrator.

**0108. APPLICABILITY.** These guidelines are the basis for a midshipman's conduct in all places and under all conditions. They apply on leave or liberty as well as at the Naval Academy. The Honor Concept describes a way of life as well as setting forth a procedure for handling violations.

### **0109. RESPONSIBILITY UPON LEARNING OF A POSSIBLE HONOR OFFENSE**

a. Any person, upon learning of what may be a violation of the Honor Concept, has the following options:

- (1) Promptly report the evidence to the Brigade Honor Chair;
- (2) Discuss the incident with the suspected offender and report the offender to the Brigade Honor Chair.
- (3) Discuss the incident with the suspected offender and formally counsel the offender in writing; or
- (4) Discuss the incident with the suspected offender and, if it appears that no violation was committed, take no further action;

b. Prior to selecting a course of action, the person learning of a possible violation normally should gather relevant facts and discuss them with the suspected offender. The person learning of the offense should not use a counseling sheet or tell the midshipman that they are being counseled until a final decision is made on what action is to be taken. This avoids having the suspected offender give up the right to remain silent under the auspices of counseling.

c. The responsibility for the proper course of action rests with the individual learning

of the possible violation. To maintain confidence in the fairness of our system, midshipmen, officers attached to the Naval Academy, and Naval Academy civilian faculty members must take one of the steps outlined above. Failure to do so may result in conduct action against the midshipman or action against the faculty or staff member pursuant to 10 U.S.C. § 6965.

d. Any person who decides to report a possible honor offense should submit a simple written statement of the facts to the Brigade Honor Chair. (Format in Appendix A.)

e. The accuser must report an honor violation, if a report is to be made, within 21 calendar days of learning of the violation. The Brigade Honor Chair will terminate any case that is reported to the Chair more than 21 days after learning of the offense. For purposes of this section, an accuser may report a suspected violation to the Ethics Advisor if the Brigade Honor Chair is on leave or movement order. Days that a midshipman is away from the Naval Academy on December/January holiday leave or summer training are not counted against the 21 day requirement. If the accused alleges a violation of the 21 day rule, the Brigade Honor Chair will finally decide the issue and will memorialize his decision in a written memorandum to be added to the case package for review by the Commandant of Midshipmen. Under no circumstance will the 21 day issue be considered by the Honor Board. The 21 day rule does not apply to Honor Counseling.

f. Anyone learning of a potential violation who elects to counsel a midshipman should do so as soon as possible and must do so in writing on a counseling sheet using the format contained in Appendix B. A person who initiates a discussion regarding a possible honor violation with the suspected midshipman should do so in a manner that does not lead the midshipman to believe that he or she is being counseled. When a midshipman believes that he or she is being counseled, that midshipman may volunteer information under the auspices of counseling that may have not been otherwise volunteered, given a midshipman's right to remain silent when faced with an accusation.

(1) To meet the spirit of the Honor Concept, the midshipman being counseled must be forthright, admit to the offense, and be remorseful. The counselor must be confident that the midshipman has internalized the Honor Concept, has learned from the encounter and will be unlikely to commit another offense. The facts of the offense must be agreed upon.

(2) The formal counseling sheet must be turned in to the Brigade Honor Chair via the Company Honor Representative.

(3) Upon receipt, the Brigade Honor Chair will review the record of counseling to ensure it is within the spirit of the Honor Concept and that the requirements for proper counseling have been met. If the Brigade Honor Chairman agrees with the counseling as an appropriate course of action, he will initial the counseling sheet and forward it to the Ethics Advisor to be maintained in strict confidentiality.

(4) If the Brigade Honor Chair feels the counseling is not within the spirit of the

Honor Concept, or if the Chair possesses information that discounts the validity of using counseling as a remedial tool, the Brigade Honor Chair will consult with the Ethics Advisor and counselor and, if deemed appropriate, forward the case to the Vice Chair for Investigations as an accusation possibly to be heard by the Brigade Honor Board. Such action might be appropriate in cases where a Midshipman has multiple documented counseling sheets on record, additional accusations are generated as a result of the counseling, additional information is received subsequent to the counseling which aggravates the offense, multiple midshipmen commit the same offense in the same time period and are treated differently, the offense is considered too egregious to be handled with counseling, or other similar circumstances. When the accusation is forwarded, any statements made by the accused during counseling will be removed from the record and not allowed as evidence. Witnesses will be directed to disregard such statements. The accused will be informed that any such statements cannot be used as evidence and given an opportunity to plead not guilty if he/she so chooses.

(5) If more than one counseling sheet is received on a single midshipman, the Commandant will be advised and will review the case to consider assigning the midshipman to the honor remediation program.

(6) No separate punishment will be imposed by the person doing the counseling. Examples of such prohibited punishment include extra term papers, essays, pro reports or homework problems. Only the Commandant, Superintendent, or Secretary of the Navy may impose punishment for honor violations (see paragraphs 0411-0412).

**0110. HONOR EDUCATION.** A key to the path to becoming a Navy or Marine Corps Officer is understanding and reverence for honorable behavior. Honor education is a four year continuum beginning with plebe summer. Midshipmen, faculty, and others assigned to the Naval Academy share equal responsibility with the Brigade Honor Committee to ensure all members of the Brigade understand the Honor Concept and the precepts of integrity on which it is founded. The Four Year Honor Training Program, as developed and implemented by the Character Development Officer and Brigade Honor Committee, describes the course of Honor training within the Brigade. All midshipmen, faculty and officers will comply with this instruction.

#### **0111. ASSISTANCE WITH HONOR QUESTIONS**

a. The Brigade Honor Committee is organized so that all midshipmen can find assistance within their own company by talking with their Company Honor Representatives or with the midshipman chain of command. Company Officers or the Ethics Advisor can also answer questions on integrity issues.

b. A midshipman accused of an honor offense is provided a Midshipman Advisor whose role is described in paragraph 0211. If further assistance is desired, legal consultation is available at the Office of Legal Counsel.

## CHAPTER 2 ORGANIZATION

### 0201. GENERAL COMPOSITION

a. The Brigade Honor Committee is the midshipman organization which is responsible for:

- (1) Executing the relevant portions of the Naval Academy Character Development Program (CDP);
- (2) Educating the Brigade with regard to the Honor Concept;
- (3) Ensuring high standards of honor and recommending improvements to the CDP and the Honor Concept;
- (4) Keeping the Honor Concept alive as an integral part of every midshipman's life; and,
- (5) Investigating and processing the cases of those midshipman reported for violations of the Honor Concept.

b. The Brigade Honor Committee is composed of the following individuals:

- (1) A Chair for the committee, assisted by six other officers,
- (2) Vice Chair
- (3) Deputy Chair for Investigations,
- (4) Deputy Chair for Education,
- (5) Secretary,
- (6) Coordinator,
- (7) Academic Liaison; and,
- (8) Battalion Honor Representatives
- (9) Company Honor Representatives
- (10) Brigade Investigating Officers

**0202. HONOR COMMITTEE CHAIR.** The Brigade Honor Chair is responsible for the administration of the Honor Concept within the Brigade of Midshipmen to include the following:

- a. Coordinates all aspects of Honor indoctrination,
- b. Conducts Honor Committee meetings and Brigade Honor Board hearings,
- c. Coordinates with Brigade leaders, Class Presidents, and Company Honor Representatives to maintain a proper attitude toward honor within the Brigade.
- d. Ensures the proper processing of reported honor violations,
- e. Conducts preliminary screening of reported violations and forwards cases to the Deputy Chair for Investigations, as appropriate,

- f. Appoints Brigade Honor Boards,
- g. Reviews and approves prospective representatives,
- h. Keeps the Character Development Officer, Commandant and Ethics Advisor well informed of all Brigade Honor Committee matters.

**0203. THE BRIGADE HONOR COMMITTEE VICE CHAIR.**

- a. Carries out all duties assigned by the Chair,
- b. Conducts Brigade Honor Board hearings when so assigned by the Chair; and,
- c. Designates presiding officers for Brigade Honor Boards in the absence of the Honor Chair.

**0204. THE BRIGADE HONOR COMMITTEE DEPUTY CHAIR FOR INVESTIGATIONS.**

- a. Designates a Midshipman Investigating Officer for each case,
- b. Prepares and sends the notification of a preliminary investigation to the accused,
- c. Drafts the formal statement of charges with the assigned investigating officer following the preliminary investigation, for presentation to the accused after review by the Legal Advisor to the Commandant.
- d. Conducts training sessions for Midshipmen Investigating Officers,
- e. Supervises the conduct of all investigations,
- f. Ensures that the Investigating Officers seek expert opinions in cases involving difficult or specialized knowledge, particularly plagiarism and cheating in technical courses.
- g. Performs such other duties as are assigned by the Chairman.

THE DEPUTY CHAIR FOR INVESTIGATIONS WILL NOT PRESIDE AT BRIGADE HONOR BOARD HEARINGS.

**0205. THE BRIGADE HONOR COMMITTEE DEPUTY CHAIR FOR EDUCATION.**

The Deputy Chair for Education will oversee the Naval Academy's honor education program and will work with the Character Development Officer to develop and implement a training and education program for officers, coaches and faculty in matters pertaining to honor and integrity. When so directed, the Deputy for Education will:

- a. Conduct Brigade Honor Board hearings;
- b. Draft feedback ("XYZ") letters to the Brigade and faculty describing the status of specific cases and giving reasons therefore;
- c. Maintain training records and review Company Honor Representative training records;
- d. Develop lectures and training syllabi for honor education;
- e. Designate midshipmen as observers for each Brigade Honor Board; and
- f. Perform such other duties as are assigned by the Chair.

16 Apr 01

**0206. THE BRIGADE HONOR COMMITTEE SECRETARY:**

- a. Ensures that hearing records are complete, current and properly safeguarded,
- b. May serve as recorder at Brigade Honor Board hearings; and,
- c. Notifies all involved personnel of the status and results of each case throughout the honor process. This is to include the accused, accuser, Chain of Command, witnesses, and, when appropriate, observers. This notification would occur after each significant stage of the process including the Brigade Honor Chair's decision to investigate or terminate, the Brigade Honor Chair's decision to prefer formal charges or terminate, the Brigade Honor Board, the Commandant's Hearing, the Superintendent's Review, and the Secretary of the Navy's decision.
- d. Carries out any duties assigned by the Chair.

**0207. THE BRIGADE HONOR COMMITTEE COORDINATOR:**

- a. Ensures communications are maintained with all Company and Battalion Honor Representatives and the Brigade.
- b. Schedules all Honor Committee meetings and Honor Board hearings using a computer-generated process of random selection of board members; and,
- c. May serve as Recorder at Brigade Honor Board hearings.

**0208. THE BRIGADE HONOR COMMITTEE ACADEMIC LIAISON:**

- a. Acts as a Honor Committee point of contact for the faculty at the Naval Academy,
- b. Assists the Chairs of the Academic Departments and the Departmental Honor Liaison officers (see paragraph 0216) in keeping the faculty advised on honor matters to include scheduled observers,
- c. Ensures the faculty is provided up-to-date honor materials and conducts faculty training sessions,
- d. Works with the Deputy Chair for Investigations to ensure that a faculty member who becomes an accuser in an honor case is kept informed of the status and the final outcome of the case;
- e. Inform the Academic Dean and Provost and Faculty Senate representative of the time and date of every Honor Board to provide the opportunity for the presence of faculty observers at each board;
- f. Inform the Deputy Director of Athletics of the time and date of every Honor Board to provide the opportunity for the presence of an Athletic Department representative at each board;
- g. May serve as Recorder on Brigade Honor Boards.

**0209. BATTALION HONOR REPRESENTATIVES** are recommended by the Honor Chair and approved by the respective Battalion Officer. A First Class Midshipman will serve from each Battalion as the Battalion Honor Representative. Their job includes:

- a. Link between the Brigade Honor Staff and Company Honor Representatives,

- b. Aid the Deputy Chair for Education in preparation and execution of honor lessons; and
- c. Act as Presiding Officer at Battalion Counseling Boards.

**0210. COMPANY HONOR REPRESENTATIVES** are the link between the Brigade and the Brigade Honor Committee and, when appointed, will:

- a. Serve on the Brigade Honor Boards.
- b. Act as Midshipman Advisors to the accused when requested.
- c. Be responsible for the education of their companies in the Honor Concept and maintain complete training records.
- d. Keep other Honor Representatives in their company informed on honor matters.
- e. Ensure prescribed Honor Concept material is covered during seminars within their company.
- f. Ensure full awareness of the principles of the Honor Concept by the midshipmen within their company.
- g. Perform such additional duties assigned by the Chair.

**0211. THE BRIGADE INVESTIGATING OFFICER.**

a. Is a member of the Brigade Honor Committee who investigates cases assigned by the Deputy Chair for Investigations. The responsibilities of the Brigade Investigating Officers are to:

(1) Gather evidence, interview witnesses, collect statements, and submit a written report of the investigation to the Deputy Chair for Investigations.

(2) Investigate and present cases to the Brigade Honor Board in a fair, impartial, and objective manner, providing all relevant information to the Brigade Honor Board.

b. There will be 15 Brigade Investigating Officers comprised of first class and second class midshipman. The Honor Chair shall solicit volunteers to fill the positions of the Brigade Investigating Officers in the spring for the following academic year. Recommendations by the Honor Chair of midshipmen to serve as Brigade Investigating Officers shall be submitted to the Ethics Advisor for approval.

c. Be trained by the Deputy Chair for Investigations, the Ethics Advisor, and a Legal Advisor.

**0212. THE MIDSHIPMAN ADVISOR.**

- a. Is a Company Honor Representative requested by name by the accused.
- b. Will have had no significant prior contact with the case.
- c. Will not be an elected officer.
- d. Accompanies the accused before the Brigade Honor Board.

16 Apr 01

e. Familiarizes the accused with the Honor Concept (including the rights of the accused) and case processing procedures.

f. Provides practical advice on the presentation of the accused's case. Midshipmen acting as advisors are reminded that it is a violation of the Honor Concept to advise another to lie.

g. Assists the accused in preparing for the various steps in processing a case,

h. Serves as an advisor to the accused, not as the accused's representative. The accused, and not the Midshipman Advisor, shall question witnesses, present evidence, make a final statement, and otherwise present the case.

### **0213. NOMINATIONS AND ELECTIONS**

#### a. Company Representatives

(1) During the second semester of the academic year, the third class in each company will elect two Honor Representatives to the Honor Committee. Each company will first nominate a slate of potential candidates. Company Officers will screen the nominees, and the class will then elect representatives from the slate of approved candidates. Midshipmen elected as the Second Class Honor Representatives will serve as their class representatives for both their second class and first class years unless they are subsequently relieved or selected as an Honor Committee Officer.

(2) Prior to serving as Honor Representatives, all newly elected representatives are examined on their knowledge of the Honor Concept by a written exam administered by the Brigade Honor Committee Chair. The Chair may require retraining or replacing prospective representatives who fail this exam.

b. Battalion Honor Representative. The Chair will recommend to each Battalion Officer for approval, a First Class Midshipman to serve as the respective Battalion Honor Representative.

c. Selection of First Class Honor Committee Officers. In mid-January of each year, Company Officers will prepare summary sheets on Second Class Midshipmen desiring to fill the following positions during the next academic year: Chair, Vice Chair, Deputy Chair for Investigations, Deputy Chair for Education, Secretary, Coordinator and Academic Liaison Officer for the Brigade Honor Committee. The summary sheets must contain specific comments on the past performance of the individual and will be forwarded to the Brigade Honor Chair. The Brigade Honor Chair and the Ethics Advisor will approve the list of candidates. Once approved, all Second Class Company Honor Representatives will meet to elect a slate of 10-15 candidates. The Commandant will then convene a striper selection board to consider the slate, along with the Brigade Striper slate, and select the officers of the Honor Committee to be recommended to the Superintendent for the next academic year. The Superintendent will approve the selection of Midshipman

Lieutenant Commander and Midshipman Commander positions. Midshipmen selected for an Honor Committee office are ineligible to serve in any other striper position for the first class year.

d. Relief of Honor Committee Members. Upon recommendation of the Chair, Honor Committee members whose aptitude or performance is not in keeping with the highest standards of the Brigade may be dismissed from the Honor Committee. The Chair will coordinate with the Ethics Advisor to determine the procedure to be used to fill any vacancies in the Honor Staff. The Commandant will approve the removal and replacement of Honor Committee officers.

#### **0214. RESPONSIBILITIES OF THE CHARACTER DEVELOPMENT OFFICER UNDER THE HONOR CONCEPT.**

a. The Naval Academy Character Development Program (CDP) unifies all Academy efforts aimed at character development. The CDP integrates the efforts of the administration, the academic departments, the athletic department, extra-curricular activities, the Office of the Chaplains, and the Brigade Honor Committee.

b. The Character Development Officer oversees the Character Development Program (CDP) and is directly responsible to the Superintendent for educating, training and providing feedback to the Brigade of Midshipmen, faculty and staff in all matters regarding the Honor Concept. The Character Development Officer will work closely with the Commandant and the Brigade Honor Committee to discharge the following responsibilities:

- (1) Ensure that the CDP integrates character development across the entire Naval Academy community;
- (2) Maintain records, survey data and statistics associated with the honor process;
- (3) Evaluate the success of the CDP through periodic surveys;
- (4) Receive regular reports from the Ethics Advisor on the disposition of individual cases;
- (5) Administer the honor remediation program.

#### **0215. ETHICS ADVISOR**

a. The Commandant appoints the Ethics Advisor who will be a liaison with the Character Development Officer and act as an advisor to the Honor Chair. The Ethics Advisor also:

- (1) Ensures compliance with all guidelines set forth in the Honor Concept;
- (2) Keeps the Commandant and Character Development Officer informed of the operation of the Honor Committee and the status of individual cases;
- (3) Approves candidates for selection to the Honor Committee prior to elections;

16 Apr 01

- (4) Recommends to the Commandant the time for transfer of duties to the Second Class Honor Committee in the spring of each year (See paragraph 0217);
- (5) Reviews all completed Brigade Honor Board hearings for compliance with provisions of the Honor Concept, noting any errors in those cases forwarded to the Commandant for disposition;
- (6) Destroys all case records when appropriate -see paragraph 0417;
- (7) Assists and advises the Character Development Officer and Honor Committee in preparation of changes to the Concept;
- (8) Briefs all faculty members scheduled to appear at Honor hearings on the procedures and functions of the hearing; and
- (9) Ensures that each case is processed expeditiously and consistent with the processing goals contained in paragraph 0414.

**0216. DEPARTMENTAL HONOR LIAISON OFFICER.** Each Academic Department Chair will appoint a Liaison Officer to the Brigade Honor Committee. The Departmental Honor Liaison Officer will:

- a. Be the point of contact for the Brigade Honor Committee Academic Liaison (see paragraph 0208),
- b. With the aid of the midshipman Academic Liaison, be responsible for keeping members of their department informed about the Honor Concept and procedures concerning possible honor violations.
- c. Coordinate and disseminate policies which are consistent with the Honor Concept regarding documentation requirements, collaboration limitations, and instructor provided information or "gouge." and ensures they are distributed and explained by each instructor on the first day of each course.
- d. Receives charges alleging an honor violation which arise within the department and ensures they are delivered to the Brigade Honor Chair within 21 calendar days.

**0217. ASSUMPTION OF RESPONSIBILITY BY THE SECOND CLASS COMMITTEE.**

At an appropriate time in April or May of each year, the Commandant will direct that the Second Class Honor Committee assume responsibility for processing all underclass cases reported. This takes place after completion of the selection of Honor Committee officers. Underclass cases reported after the turnover date are heard by a Brigade Honor Board composed of Second Class Honor Committee members who will handle functions usually performed by the First Class Committee. A midshipman who has been elected as a Second Class Honor Representative for the following year will fill the requirements for the Second Class Representative listed in 0407b(2) of this instruction, provided the accused is a third or fourth class. The First Class Honor Committee and the First Class Brigade Commander/Sub-Commander or representative will continue to hear cases involving first class midshipmen and they will complete all cases reported before the turnover.

### CHAPTER 3 THE RIGHTS OF THE ACCUSED

**0301. GENERAL.** The Honor Concept requires scrupulous protection of the rights of the accused during the processing of an alleged violation. The Brigade demands both high standards of integrity and fair and impartial treatment of every member accused of a violation of the Honor Concept.

**0302. SPECIFIC RIGHTS.** A midshipman accused of an honor violation has the following rights:

a. To have all proceedings and information concerning a pending or completed investigation of an honor offense kept private to the maximum extent possible. The Brigade Honor Committee and the Naval Academy will respect the rights of the accused under the Privacy Act, to include making no public identification of the accused or respond to public inquiries without the accused's consent.

b. To free consultation. The Honor Concept provides a Midshipman Advisor to assist in the accused's defense. If further assistance is desired, the Office of Legal Counsel provides qualified military counsel to advise the accused. While an accused midshipman may use any source to prepare for an honor hearing, that midshipman, assisted by the Midshipman Advisor, must present his or her case in any hearing before the Brigade Honor Board or the Commandant. The accused midshipman may seek counsel outside of the Honor Board hearing room and, at the discretion of the Presiding Officer, be allowed reasonable opportunity, in frequency and duration, to consult with such counsel during the hearing. Other advisors are not permitted inside a Brigade Honor Board, but may remain in the vicinity of the hearing room. In cases of extraordinary complexity or those involving technical expert advice, the accused may request in writing that counsel be permitted to attend the Commandant's hearing. The Commandant may approve or deny such a request and specify the role of counsel.

c. To choose his or her Midshipman Advisor from among elected company representatives. After choosing an advisor, the accused midshipman will:

(1) Supply the name of the advisor to the Investigating Officer,

(2) If the accused does not choose an advisor, one will be appointed by the Brigade Honor Committee Chair. The accused must submit a written waiver to the Chair in the event the accused does not desire a Midshipman Advisor using the format in Appendix C. When a joint hearing is directed (see paragraph 0415), each accused midshipman will have a separate Midshipman Advisor.

d. To be provided copies of all evidence when served with charges. This shall occur at least three days prior to the hearing in order to allow an accused to prepare his or her case after being served with the formal charges. The day of service will not be counted, but the day of the first hearing in the case will be counted. Saturdays, Sundays, and federal holidays are not counted.

- e. To be present with his or her midshipman advisor at open sessions of the Board during the hearing of his or her case.
- f. To confront his or her accuser.
- g. To challenge members of the Board for cause; that is, for a reason which would prevent a member from being impartial.
- h. To examine all physical or documentary evidence in the case and to present such evidence in his or her own behalf.
- i. To call witnesses, provided they are reasonably available and to cross-examine witnesses called against the accused. Reasonable availability will be determined by the Ethics Advisor on a case by case basis.
- j. To remain silent. No adverse inference shall be drawn from an accused's decision to remain silent.
- k. To make either a written or oral statement concerning the alleged offense(s).

### **0303. THE RIGHT TO REMAIN SILENT**

a. Honor hearings are administrative hearings, not trials. Midshipmen separated from the Naval Academy as a result of a violation of the Honor Concept receive a separation under honorable conditions. Because there is normally no pending criminal charge or reasonable possibility of criminal prosecution, the right against self-incrimination does not apply to honor proceedings. Nonetheless, once an accuser reports an allegation of an honor violation to the Brigade Honor Committee a midshipman accused of an honor offense shall have the right to remain silent without anyone drawing any adverse inference from his or her silence. However, if an accused makes a written or oral statement to an honor board, the members may ask questions on the issues raised. Failure to respond to any questions may result in an instruction from the Presiding Officer to the board not to consider the accused's statement.

b. The right to remain silent does not prevent competent authorities from requiring a midshipman to answer questions specifically, directly, and narrowly relating to the performance of official duties. For example even if a Taps inspector was suspected of lying by submitting a false muster, competent authority could ask whether another midshipman was actually present, as such information is necessary to maintain accountability. However, the accused may not be required to provide information which may provide the basis for charging a separation level offense under the Administrative Conduct System.

c. The midshipman must specifically object to the consideration of any statement which may have been obtained in violation of this instruction at the proceeding. Failure to object to any exhibit prior to the convening of a Brigade Honor Board waives any error. The Presiding Officer will decide whether a statement will be considered.

**0304. WAIVER OF RIGHTS.** The accused may voluntarily waive any right, including the right to a particular composition of a board. Such waivers will be in writing. (See Appendix C)

16 Apr 01

**0305. HEARINGS WITHOUT THE ACCUSED PRESENT** .The accused may waive the right to be present at open sessions of the Brigade Honor Board. (See format in Appendix C) An accused is not compelled to appear. If the accused is given written notice of the time and place of the hearing, but is voluntarily absent, the accused is deemed to have waived the right to be present. At the discretion of the Presiding Officer, the hearing may either be delayed or allowed to proceed in the accused' s absence, so long as the accused' s Midshipman Advisor is available to observe the case. If the hearing proceeds .the presiding officer shall provide evidence that the accused was poorly notified and is voluntarily absent as part of the official record during an open session.

**0306. RESPONSIBILITY FOR SAFEGUARDING RIGHTS.** The Midshipman Investigating Officer shall ensure the accused fully understands all rights before proceeding with the case using the format contained in Appendix D. Each person involved in the case should insist that the accused's rights are fully protected at all times.

## **CHAPTER 4 PROCESSING ALLEGED HONOR OFFENSES**

### **0401. REPORTING HONOR OFFENSES**

a. Any midshipman, faculty member or officer who decides to report a suspected honor violation should submit a report in the format of Appendix A to the Brigade Honor Committee Chair. Prior to reporting an offense, the accuser may consult with Company Honor Representatives or Departmental Honor Liaison Officers as appropriate. The benefits of such consultation must be weighed against the necessity to protect the accused's right to privacy to the maximum extent possible.

b. Only midshipmen, officers attached to the Naval Academy, or Naval Academy civilian faculty may prefer formal charges before the Honor Committee. When an individual not authorized to prefer formal charges reports facts suggesting a violation of the Honor Concept, the Deputy Chair for Investigations or the Ethics Advisor will prefer the formal charges.

**0402. PRELIMINARY SCREENING BY THE BRIGADE HONOR CHAIR.** The Brigade Honor Chair will carefully review each report of a possible honor offense. If the Chair determines that there clearly was no violation of the Honor Concept or that the case was not reported within 21 calendar days of the accuser learning of the offense, considering authorized exceptions, he will terminate the case and make a report on the disposition and reasons for termination to the Commandant of Midshipmen. [See paragraph 0109e for further explanation of 21 day requirement] If the Chair determines that an honor offense may have been committed, the Chair may formally counsel the midshipman, document the counseling, and notify the Commandant in writing. Where the Chair considers that the case warrants further processing, he shall consult with the Character Development Officer or his designate to determine whether the case should be disposed of by action under the Honor Concept, Uniform Code of Military Justice or Administrative Conduct System. The Chair will forward cases not otherwise terminated to the Deputy Chair for Investigations. In instances where two or more people exercise different options defined in paragraph 0109, the Brigade Honor Chair will determine the appropriate action to be taken.

**0403. NOTIFICATION OF THE ACCUSED.** The Deputy Chair for Investigations will ensure the accused is notified using the format in Appendix D of the following:

- a. The Investigating Officer in the case.
- b. The accuser.
- c. The time and date of the suspected violation.
- d. The place of the suspected violation.
- e. The nature of the suspected violation.
- f. The right to select a Midshipman Advisor from among elected honor representatives.

- g. The right to remain silent.
- h. Potential financial responsibilities for First Class or Second Class Midshipmen separated from the Naval Academy under the Honor Concept. The Chair will file a copy of the notification letter showing a signed receipt by the accused, and the time and date of receipt, in the case file.

#### **0404. INITIAL PROCESSING**

a. Upon receipt of a case from the Honor Chair, the Deputy Chair for Investigations will appoint a Brigade Investigating Officer, ensuring that the individual chosen is impartial and has had no significant prior contact with the case (see paragraph 0211) .He will then notify the accused's Company Officer, Battalion Officer, Ethics Advisor and the Legal Advisor to the Commandant.

b. Upon receipt of the notice described in paragraph 0403, the accused will either select a Midshipman Advisor or submit a written waiver of the right to an advisor to the Brigade Honor Committee Chair using the format in Appendix C. Only Company Honor Representatives are eligible to serve as Midshipman Advisor. If the accused does not select a Midshipman Advisor and does not waive the right to an advisor, the Brigade Honor Committee Chair will appoint an advisor for the accused (see paragraph 0211).

#### **0405. INVESTIGATION AND DRAFTING OF CHARGES**

a. The Midshipman Investigating Officer will conduct a thorough investigation of the alleged offenses, gathering and preserving relevant documents and physical evidence, and interviewing any witnesses, including the accused. With respect to interviewing the accused, see paragraph 0303. The Midshipman Investigating Officer should not perfect a case against the accused, but rather gather all the pertinent evidence.

b. In cases submitted by a member of the faculty involving cheating or plagiarism, the Midshipman Investigating Officer will seek a second opinion. The Investigating Officer will ask the Department Chair of the accuser's department to assign another faculty member to review the evidence of the alleged violation. The faculty member will review that evidence without consultation with the accuser and will provide a written statement of his or her findings to the Midshipman Investigating Officer within two days.

c. Upon completion of the initial investigation, the Deputy Chair for Investigations will forward it to the Brigade Honor Chair who has the authority to:

- (1) terminate the case and notify the Commandant;
- (2) formally counsel the midshipman;
- (3) forward the case to a Battalion Counseling Board;
- (4) forward the case to a Brigade Honor Board.

d. In cases forwarded to a Brigade Honor Board, the Deputy Chair for Investigations and the Midshipman Investigating Officer will draft the formal statement of

16 Apr 01

charges (see Appendix D), submit them to a designated Legal Advisor for review, and present them to the accused along with a copy of all evidence, noting the time and the date the charges are presented.

e. A recommendation for discharge of the accused midshipman by the Commandant for any reason immediately suspends any investigative inquiries and determinations by the Brigade Honor Chairman regarding the midshipman in question until final endorsement of the Commandant's recommendation has been given by both the Superintendent and the Secretary of the Navy. Upon final endorsement by the Superintendent and the Secretary of the Navy, the case will be terminated. Should the Midshipman be retained by either the Superintendent or the Secretary of the Navy, or readmitted to the Naval Academy, the honor investigation will resume at the point where the suspension of the case occurred. If feasible, the Deputy Chair for Investigation will ensure statements are obtained from all relevant witnesses prior to suspension of the investigative inquiry and will forward these statements to the Ethics Advisor for retention. When the suspension of the investigation begins, the accused midshipman will sign a written acknowledgment of the suspension.

**0406. BATTALION COUNSELING BOARD:**

a. The purpose of a Battalion Counseling Board is to counsel midshipmen who violate the Honor Concept and provide the midshipman with feedback, perspective, and formal documentation from the honor chain of command. The board will address integrity concerns arising from the midshipman's behavior, educate the accused on the importance of the Honor Concept at the Naval Academy and ethical behavior in the fleet, and provide the chain of command the opportunity to formally counsel and document the performance of the accused.

b. The decision to send a case to a Battalion Counseling Board rests with the Brigade Honor Chair.

c. The midshipman being counseled will be asked to describe the Honor Offense and his or her feelings about the offense. The Honor Concept requirements regarding counseling apply to the Battalion Counseling Board.

d. Composition of the Board:

(1) A Battalion Counseling Board should be comprised of the following five members:

(a) Presiding Officer- A Battalion Honor Representative from the same Battalion as the midshipman to be counseled.

(b) Two Battalion Honor Representatives from battalions other than the counselee's,

(c) Two Company Honor Representatives from the counselee's battalion. If the counselee is a midshipman first class, then the company honor representatives shall be first class.

e. The counselee's Battalion and Company Officer and Company Senior Enlisted Advisor will be invited to observe the board. Observers should refrain from participating in the questioning of the counselee.

**0407. BRIGADE HONOR BOARD**

a. General. In every case not terminated, a Brigade Honor Board shall decide whether a midshipman has violated the Honor Concept and will forward all findings of violation to the Commandant.

b. Composition of the Board:

(1) A Brigade Honor Board hearing the case of a first class midshipman shall consist of the following members:

(a) Presiding Officer (no vote) -The Chair, Vice Chair, or Deputy Chair for Education of the Honor Committee, as assigned by the Brigade Honor Chair.

(b) Recorder (no vote) -The Secretary, Coordinator or Academic Liaison of the Honor Committee, as assigned by the Brigade Honor Chair.

(c) Four First Class Company Honor Representatives (one vote each).

(d) Five first class members at large (one vote each).

(2) A Brigade Honor Board hearing the case of a second, third, or fourth class midshipman shall consist of the following members:

(a) Presiding Officer (no vote).

(b) Recorder (no vote).

(c) Two First Class Company Honor Representatives (one vote each).

(d) Two First Class Members-at-Large, not Company Honor Representatives or Honor Committee Officers (one vote each).

(e) Two Second Class Company Honor Representatives (one vote each).

(f) One Second Class Member-at-Large, not a Company Honor Representative or Honor Committee Officer (one vote).

(g) Two Members-at-Large from the class of the accused (one vote each).

(3) Company Honor Representatives and Members-at-Large must be chosen from at least four different battalions.

(4) The Brigade Honor Board shall not contain a member of the accused's company.

c. When the Brigade Honor Chair decides to refer a case to a Brigade Honor Board, the Chair will designate a Presiding Officer and notify the Coordinator. The

16 Apr 01

Presiding Officer and the Coordinator will arrange for a Board composed in accordance with this paragraph by ensuring that all members are sent a written notification (See Appendix E). Changes to membership of the Board are prohibited after the Board convenes. When the Board meets for the first session on a case and all members are present, the Presiding Officer will formally introduce the Board to the accused. The Board is convened when introductions are complete. The Presiding Officer will include a written record of the membership of the Board in his report.

d. Chancres to the Composition of a Board. In a Brigade Honor board hearing, all members, as prescribed in this instruction must be present unless the accused waives the deficiency (see paragraph 0304). Once the Presiding Officer convenes the Board and the Investigating Officer begins presenting evidence, board membership will not change except in the case of challenge or self-disqualification.

e. Presence of Observers at Brigade Honor Boards. Midshipmen, staff or faculty who have been designated by the Deputy Chair for Education, the Faculty Senate or the Director of Athletics, or who have submitted a request to be observers, may observe open sessions of Brigade Honor Boards when approved by the Brigade Honor Chair. The Presiding Officer may exclude the observers from all or part of the proceeding with the consent of the accused. The accused may request exclusion of observers from all or part of the proceedings and the Presiding Officer may grant the request if good cause exists to do so. The Presiding Officer should weigh any potential harm to the accused against the educational value of observers being able to attend the proceedings. The Presiding Officer will brief the observers before the start and after the completion of the Board concerning the private nature of the proceedings (See paragraph 0417a).

f. Convening the Board: Procedures before Presentation of the Case

(1) The Presiding Officer will conduct the hearing in the thoroughly professional manner which its serious nature requires. All military personnel will wear the uniform of the day. The Presiding Officer will explain the Board procedures, charge, and definition of the offense to the accused, and will ensure that the accused understands. Before proceeding, the Presiding Officer will conduct a preliminary screening to ensure that all members of the Board are impartial and have not been involved in the case.

(2) All witnesses are assumed to be honorable and their testimony should be accepted at face value. Board members must treat all participants in Board Proceedings with dignity and respect and afford each with the courtesy that a proceeding of this nature demands. The Presiding Officer will state these precepts at the beginning of each Brigade Honor Board.

(3) All Board members must be free from bias or prejudice, either for or against the accused, which would prevent them from making a fair decision based solely on the facts presented at the Board. Board members may use their general knowledge of the Naval Academy and individual experience to evaluate a case. They may not, however, rely on their own personal knowledge of the case or on any other matter not presented during open sessions of the Board. The Presiding Officer will ask the Board if any member cannot, for any reason, render an unbiased vote solely upon the evidence presented. Any member who feels unable

to render a fair vote because of bias, prejudice, or prior knowledge of the case, will so inform the Presiding Officer. The member should not state the substance of such bias or prior knowledge to the Board. The Presiding Officer will excuse such a member without further discussion.

(4) The Presiding Officer will allow the accused to challenge any member of the Board for cause. If the accused challenges any member of the Board, the Presiding Officer will excuse the other members, hear evidence on the matter and decide whether to sustain the challenge and excuse the member. The process will be conducted in open session. In this regard, the Presiding Officer may seek advice from the Ethics Advisor or a designated Legal Advisor prior to making a ruling. The accused should normally make any objection to the composition of the Board at this time. The accused may waive any deficiencies in the composition of the Board (see paragraph 0304). Such waivers shall be included in the record of the board proceedings.

(5) The Presiding Officer will appoint a replacement for any member excused maintaining the requirements set forth above.

g. Pleas. All midshipmen are presumed to be honorable unless proven otherwise. All hearings will proceed as if the accused had formally entered a not guilty plea unless a midshipman explicitly pleads guilty. If a midshipman desires to plead guilty, the hearing will proceed as set forth below and modified by paragraph 0408. The Board may refuse to accept a plea of guilty and may resolve the case as if no plea of guilty had been entered.

h. Presentation of the Case on the Issue of Guilt or Innocence. The Brigade Honor Board conducts an informal, nonadversarial proceeding to uncover the facts in the case and make decisions on the basis of the facts. The Presiding Officer will conduct the hearing generally in accordance with the published hearing guide contained in Appendix F. Failure to comply with a hearing guide, standing alone, does not invalidate a hearing. The Midshipman Investigating Officer will present the results of his investigation to the Board. The Board may ask the Investigating Officer to call witnesses and present other relevant matter at this time. The Presiding Officer will excuse each witness, except the accused and the accuser, before calling the next one. Before excusing a witness, the Presiding Officer will instruct the witness not to discuss the case with anyone except officials conducting the case. The Presiding Officer will allow the accused and members of the Board to ask questions of each witness. At the conclusion of the Investigating Officer's presentation, the Presiding Officer will ask if the accused desires to make a statement, call any pertinent witnesses or present other matters at this time. The Board may also call other witnesses if it so desires.

i. Objections to Evidence. In general, the Presiding Officer will simply note objections to evidence for the record and the Commandant of Midshipmen will resolve them on review. No evidence should be presented at the Brigade Board which is not relevant to whether a violation of the Honor Concept occurred. The Brigade Honor Board will not consider evidence in extenuation (evidence connected with the offense which does not excuse the offense, but which reduces its seriousness), unless it is relevant to the issue of guilt or innocence. The Presiding Officer may inquire into the purpose of a

16 Apr 01

line of questioning, and may limit inquiry into irrelevant matters. The Presiding Officer must, however, take care to avoid unnecessarily curtailing inquiry into issues relevant to guilt or innocence, particularly the intent of the accused. See paragraph 0503 concerning particular evidentiary issues.

j. Voting on the Issue of Guilt or Innocence

(1) After presentation of all the evidence, the Presiding Officer will call for a closed session to vote by secret written ballot. The Board will assume that a midshipman is honorable and not guilty of violating the Honor Concept unless a preponderance of the evidence indicates that the accused committed the offense as alleged. They will vote separately on each charge. They will determine a finding of "violation " or "no violation, " with a finding of "violation" requiring agreement by a super majority of the board [i.e. six of nine voting members] .The Presiding Officer will recall the Board to open session to inform the accused of the Board's findings once all the charges have been resolved.

(a) To be guilty of lying, cheating, or stealing, an accused must have the necessary state of mind. For lying, one must have intended to deceive. For cheating, one must have intended to use unauthorized assistance or to represent another's work as one's own. For stealing, one must have intended to deprive the owner, either temporarily or permanently, of the use or possession of the property. The midshipman need not intend to commit an honor violation, but only complete the action with the state of mind described.

(b) Either direct evidence; e.g., words used by the accused expressing an intent; or indirect evidence; e.g., circumstances surrounding the alleged honor violation from which one might, according to the common experience of mankind, reasonably infer the existence of an intent, may establish a guilty state of mind. The Brigade Honor Board may justifiably infer that the accused intended the natural and probable consequences of any act purposely completed. The weight, if any, to be given to an inference of the accused's intent depends upon the circumstances giving rise to the inference as well as all the evidence in the case, and must be resolved on a case by case basis. Any circumstances or condition which preclude the formation of this specific intent by the accused should be considered by the Board.

(2) If the Brigade Honor Board determines that a midshipman violated the Honor Concept, the Presiding Officer will submit a report of the Brigade Honor Board to the Commandant via the Ethics Advisor and the Commandant's Legal Advisor.

(3) If the Brigade Board finds no violation, the Presiding Officer will return the case to the Brigade Honor Chair with a report of the finding. The Chair will

review the record of the case and will make a report to the Commandant via the Ethics Advisor (see paragraph 0413). The Ethics Advisor will see that the records of the case are destroyed as set out in paragraph 0417.

(4) If, as a result of the evidence presented, the Board identifies any additional charges which should be preferred against the accused, it may direct the Investigating Officer to draft and sign each charge. In such a case the Presiding Officer will either:

(a) Return the entire case to the Brigade Honor Chair for referral to a new Honor Board which will hear the entire 'case anew'; or

(b) Complete the case already in progress, cautioning the members to consider only the charges already before the Board.

k. Confidentiality of Closed Sessions. Closed sessions of the Brigade Honor Board are confidential and handled with absolute privacy. Nobody shall discuss the opinion or vote of any member with anyone not present during the closed session discussion, except when officially required by the Ethics Advisor.

l. Record. The Presiding Officer and Recorder will prepare the record of the Brigade Honor Board in a format established by the Ethics Advisor and submit it to the Commandant via the Ethics Advisor and a designated Legal Advisor. The Presiding Officer shall attach a letter to the Commandant describing the evidence presented and facts as developed at the board, the Board's deliberations and the Presiding Officer's own opinion as to the appropriateness of the finding. This discussion will also address the board's recommendation as to disposition of the case.

#### **0408. GUILTY PLEAS**

a. A midshipman who wishes to plead guilty must indicate the desire to plead guilty by submission of a Plea of Guilty and Waiver of Hearing (Appendix G). Entry of a guilty plea expedites a case where no dispute exists over guilt or innocence. Because of the serious nature of any honor offense, the Presiding Officer must question the accused on the record in the presence of the Board to ensure that the plea of guilty is knowing, intelligent and voluntary. "Knowing" means that a plea of guilty will not be implied or inferred. It must be clearly and expressly made. A midshipman must admit to all the elements of the charge and must have the necessary intent as defined in article 0106. "Intelligent" means that the accused must understand what rights are given up by a guilty plea and what the implications are. "Voluntary" means that the guilty plea must be the product of the accused's free will without the influence of force or coercion by another. The accused or the accused's advisor should normally initiate the guilty plea. Unless the Presiding Officer concludes that the guilty plea is knowing, intelligent and voluntary, and signifies such, the Board must entirely disregard the plea.

b. In a case involving a possible guilty plea, the Presiding Officer will conduct the Brigade Honor Board as previously set forth in paragraph 0407 up to the point where the Midshipman Investigating Officer would normally present the results of the investigation to the Board. Instead of that presentation, the Presiding Officer will question the accused to

16 Apr 01

determine that the plea is knowing, intelligent and voluntary. The Midshipman Investigating Officer will then present corroborating evidence. The corroborating evidence need not prove each element of the offense, but rather need only justify an inference that the offense was committed. Normally, the Investigating Officer will present corroborating evidence in the form of written statements and documents, although he may call witnesses. The accused may withdraw a guilty plea at any time before the Board closes to vote on accepting the plea. After presentation of the corroborating evidence, the Board will vote by secret written ballot whether to accept the plea. The Board shall accept a guilty plea from a midshipman if it is determined to be knowing, intelligent and voluntary. The Presiding Officer will announce the Board's decision to accept or refuse the plea on the record.

c. If the Board does not accept the plea, the Presiding Officer will instruct the Board that a plea of not guilty has been entered for the accused, and that they must not consider any previous mention of a guilty plea for any purpose. The Presiding Officer will ask the Board if any member feels unable to disregard the previous discussion of a guilty plea. The Presiding Officer will excuse any member who is unable to disregard the previous discussion and will appoint a qualified replacement. The Presiding Officer will then offer the accused the opportunity to challenge Board members at the resumption of the hearing (see paragraph 0407f). Once the Board is constituted, the hearing may proceed as previously outlined with the presentation of evidence by the Midshipman Investigating Officer. If either the Midshipmen Investigating Officer or the accused requires additional time to obtain witnesses, they may request that time from the Presiding Officer. The Presiding Officer will decide whether or not to grant the request.

#### **0409. REVIEW OF CASES INVOLVING A VIOLATION**

a. Once the report of a case from the Brigade Honor Board is received, the Ethics Advisor will have the tapes of the Brigade Honor Board transcribed and will review the report to ensure that:

- (1) The Brigade Board was properly constituted.
- (2) The report of the case was properly prepared and contains all the evidence considered by the Brigade Honor Board.
- (3) The procedures utilized substantially complied with this instruction.

b. The Ethics Advisor will forward the report of the case with a recommendation for disposition and a summary of all prior honor offenses for the accused midshipman to a designated Legal Advisor after a complete review. The Legal Advisor will review the entire report and will advise the Commandant with respect to procedural correctness and sufficiency of the evidence. The Legal Advisor will prepare such memoranda to assist the Commandant as the Commandant directs. After a complete review of the case, the Legal Advisor will forward the report of the case to the Commandant.

**0410. COMMANDANT'S REVIEW AND HEARING**

a. The Commandant will review the report of the case, including the transcript of the Brigade Honor Board. The Commandant may return the case to the Brigade Honor Board, or a new Brigade Honor Board for such corrective action as is required to ensure compliance with this instruction.

b. Unless the Commandant returns the case to the Brigade Honor Board, upon completion of the review, the Commandant will hold a hearing with the midshipman. The midshipman may waive the right to appear at the hearing (see paragraphs 0304 and 0305). The hearing will be an informal, nonadversarial proceeding. The midshipman may present matters in extenuation and mitigation, but may not present evidence on the issue of guilt or innocence. The Commandant may also consider matters which aggravate the seriousness of the case. If a midshipman has previously been formally counseled or found guilty of an honor offense, the Commandant may consider the prior offense. The Commandant may also consider the midshipman's performance record. The Commandant may, however, limit the introduction of evidence which is irrelevant or repetitive. In the event that new evidence is discovered which could not reasonably have been known at the time of the Brigade Honor Board, and which is so material as to possibly affect the result, the Commandant shall remand the case to that board, or direct that a new board be convened, to consider this additional evidence.

c. The hearing will be private and official, and not open to the public. The midshipman's chain-of command, members of the Honor Board who heard the accused's case, and a senior faculty member designated by the Academic Dean may attend the hearing.

d. The Commandant may allow other midshipmen, staff or faculty to observe the hearing. The Commandant may exclude the observers from all or part of the proceeding if the accused consents. The accused may request the exclusion of observers from all or part of the proceedings and the Commandant may grant the request if there is good cause to do so. The Commandant should weigh any potential harm to the accused against the educational value of observers being able to attend the proceedings. The Ethics Advisor will brief the observers before the start and after the completion of the hearing concerning the private nature of the proceedings.

e. The Commandant has:

(1) The authority to review the record of the honor board and to disapprove those findings which are clearly erroneous;

(2) The authority to disapprove the findings of an honor board during which a procedural violation of this instruction was committed which cannot subsequently be cured; and to return the case to the Honor Chair for consideration by a new board (see paragraph 0502);

(3) The authority to return the case to the honor board or to direct that a new board be convened to consider newly discovered evidence which could not reasonably have been known at the time of the honor board;

(4) The duty to approve only those findings which are correct in law and fact.

(5) The duty to consider matters in extenuation and mitigation.

f. Following the hearing, the Commandant may:

(1) Remand the case to the honor board, or direct that a new board be convened, in cases involving prejudicial error or newly discovered evidence; in this event, the Commandant will provide the Brigade Honor Chair with a memorandum for the record discussing the basis for his action;

(2) Find a violation, but exercise discretion by retaining the midshipman at the Naval Academy, awarding punishment and placing the midshipman on Honor Probation (to include assignment to a remediation program) (see paragraph 0411) in lieu of recommending separation;

(3) Find no violation and terminate the case after reviewing all evidence presented at the Brigade Honor Board and determining that the decision reached was clearly erroneous.

(4) Forward the charges to the Superintendent, recommending separation from the Naval Academy.

g. If the Commandant finds a violation has occurred, and recommends separation, the Commandant will forward the case to the Superintendent via the Staff Judge Advocate.

h. The accuser and all witnesses at the Brigade Honor Board will be informed of the results of the Commandant's hearing by the Honor Committee Secretary.

#### **0411. DISCRETION**

a. A violation of the Honor Concept may result in separation from the Naval Academy. The Superintendent and the Commandant may exercise discretion in cases where they believe, on the basis of the entire record, that the midshipman has the demonstrated potential to develop the proper sense of personal honor required of a commissioned officer before graduation. The midshipman will be placed on Honor Probation and assigned to a remediation program in order to receive extensive counseling on the importance of and reasons for the Academy's Honor Concept and integrity as a fundamental part of a military officers value system. The Commandant will also inform the midshipman that the finding of guilt will be considered relevant in any proceeding or hearing involving recommendations in future cases of misconduct, unsatisfactory military performance or academic deficiency.

b. The Commandant will present a letter documenting his action to any midshipman who is retained at the Naval Academy after being found guilty of an Honor violation. The Ethics Advisor will retain a copy of the letter and file a copy in the midshipman's performance jacket.

c. The Commandant of Midshipmen is authorized to impose sanctions which may include honor probation and loss of leave and privileges. Specifically, the Commandant may assign sanctions as follows:

- (1) loss of leave for up to one year;
- (2) loss of privileges for up to one year;
- (3) Honor Probation for up to one year which may include:
  - (a) restriction to the Yard [as defined in MIDREGS] not to exceed six months;
  - (b) prohibition of participation in sports and extracurricular activity contests or performances but permission to participate in practices;
  - (c) prohibition of representation of the Academy outside the yard in any capacity;
  - (d) loss of stripes and any other position of authority;
  - (e) delayed graduation if the offense is committed by a first class midshipman and probation extends past the graduation date for that class;
  - (f) assignment to a remediation program; and
  - (g) automatic recommendation for separation by the Commandant for commission of any honor offense during the probation period.

d. The Honor Remediation Program will be administered by the Character Development Officer. At the completion of the program, the midshipman's mentor will forward to the Commandant, via the Character Development Officer, a report summarizing the midshipman's program with a recommendation for disposition. The Commandant may either consider the midshipman successfully remediated and remove them from the program, assign the midshipman to further remediation or deem them remediation unsuccessful and forward the case to the Superintendent with a recommendation for separation.

e. While on Honor Probation, if a midshipman is counseled for an honor offense, found in violation by an Honor Board, or otherwise violates the terms of their probation, the Commandant will convene a hearing with the midshipman and may forward the case to the Superintendent with a recommendation for separation.

#### **0412. SUPERINTENDENT'S REVIEW AND ACTION**

a. The Superintendent's Staff Judge Advocate will review cases that are forwarded to the Superintendent. Thereafter, the Superintendent will review the report of the case, including the report of the Brigade Honor Board and the Commandant's memorandum. The Superintendent has:

- (1) The authority to review the record of the honor board and to disapprove those findings which are clearly erroneous;
- (2) The authority to disapprove the findings of an honor board during which a procedural violation of this instruction was committed which cannot subsequently be cured; and to remand the case to the Honor Chair via the Commandant for consideration by a new board;

(3) The authority to remand the case to the honor board or to direct that a new board be convened to consider newly discovered evidence which could not reasonably have been known at the time of the honor board;

(4) The duty to approve only those findings which are correct in law and fact.

(5) The duty to consider matters in extenuation and mitigation.

b. Following this review, the Superintendent may:

(1) Remand the case to the honor board, or direct that a new board be convened, in cases involving prejudicial error or newly discovered evidence; in this event, the Superintendent will provide a memorandum for the record to the Honor Chair, via the Commandant, discussing the basis for his action;

(2) Find a violation, but refer the case back to the Commandant for imposition of such action as the Commandant deems appropriate (see paragraph 0411);

(3) Find no violation and terminate the case after reviewing all evidence presented at the Brigade Honor Board and determining that the decision reached was clearly erroneous.

(4) Recommend to the Secretary of the Navy that the midshipman be discharged from the Naval Academy for unsatisfactory conduct.

(5) Find a violation, but favorably endorse the midshipman's request to the Secretary of the Navy to voluntarily participate in the Reevaluation/Readmission Program in accordance with SECNAVINST 1531.1B.

c. The Superintendent will notify the midshipman of the decision. If the Superintendent recommends separation, the midshipman may submit a qualified resignation. However, the Superintendent will normally not favorably endorse any request to resign after he has acted in a case.

**0413. REVIEW OF TERMINATED CASES: REPORT TO THE ACCUSER.**

In each case which is terminated, including cases terminated by the Brigade Honor Chair, the Chair will report the circumstances of termination to the Commandant. The Commandant will, unless already done, review the case and inform the accuser of the result.

**0414. PROCESSING GUIDELINES.**

a. The processing guidelines are:

	Event	Total Elapsed Time (Calendar Days)
(1)	Accusation of honor violation received by Chair.	Begin

- |      |  |         |
|------|--|---------|
| (2)  | All notification letters sent out. Case forwarded to Deputy vice Chair for Investigations.   | 2 days  |
| (3)  | Notification of a preliminary investigation form prepared. Investigating Officer assigned. Notification letter presented to and signed by the accused. | 5 days  |
| (4)  | All investigations completed. Formal statement of charges drafted, presented to, and initialed by the accused.   | 19 days |
| (5)  | Brigade Board completed.   | 23 days |
| (6)  | Case transcribed and reviewed by Ethics Advisor.   | 37 days |
| (7)  | Commandant's Hearing held. (Legal Advisor).  | 41 days |
| (8)  | Commandant's memo recommending separation delivered to Superintendent.   | 46 days |
| (9)  | Review of case by Superintendent. (Includes Staff Judge Advocate review).  | 51 days |
| (10) | Accused's Show Cause Statement due.  | 57 days |
| (11) | Forwarding endorsement signed by Superintendent.   | 62 days |

b. This time table does not include time periods when a delay in processing may be necessary. Examples include final exams, leave periods, joint boards, summer, training priorities, involvement of non-USNA entities (NCIS, civilian authorities, non-local commands, etc.), need for further significant investigation after completion of the initial investigation, approved requests for delay by the accused or other reasonable delays. Significant delays will be approved by the Commandant or Superintendent. Delays will be noted as part of the package forwarded to the Secretary.

c. These are intended to be guidelines and, while it is anticipated that most cases should be resolved within them, it is emphasized that each and every case must be afforded the time and individual attention it warrants from the investigative stage through ultimate action by the Secretary. Failure to complete a case within the processing guidelines is not a deprivation of a substantive right of the accused. However, command attention to meeting the guidelines is expected.

#### **0415. JOINT HEARINGS**

16 Apr 01

a. Resolution by joint hearings may occur where two or more midshipmen are alleged to have committed honor offenses arising out of the same circumstances. The Brigade Honor Chair will consult with the Commandant's Legal Advisor before directing a joint hearing.

b. The Investigating Officer will notify the midshipmen accused at least two days before any joint hearing that their hearing will be heard jointly with that of other accused midshipmen. They must submit any objections to the joint hearing, specifically stating how a joint hearing would hurt their case, by 1200 on the day before the scheduled hearing. When a joint hearing is directed, each accused midshipman is required to choose a separate Midshipman Advisor.

c. Joint hearings will proceed generally as set out in paragraphs 0407 and 0408. The Presiding Officer will allow each midshipman to be present during the presentation of all the evidence. He will permit each midshipman to question each witness, including other accused midshipmen if they choose to make a statement. The Presiding Officer should so organize the hearing that each accused midshipman has the opportunity to examine witnesses without unduly prolonging the hearing. If, during a joint hearing, the Presiding Officer believes that further proceedings should occur separately, he may adjourn the hearing and consult with the Brigade Honor Chairman or the Commandant's Legal Advisor. This may occur in the case of a joint board where one of the accused elects to plead guilty. If separate hearings are held, the Brigade Honor Chairman will convene new Boards to hear the case.

d. If a group of midshipmen accused of honor offenses arising out of the same circumstances include midshipmen of different classes, the composition of the Brigade Honor Board will be as described in paragraph 0407b with additional Members-at-Large assigned to represent all the classes of the accused. Each underclass Member-at-Large will vote only on the charges involving their own classmates.

e. Where the evidence suggests that multiple accused conspired to either commit the underlying violation or to fabricate evidence on each other's behalf, the Honor Chair may consult with the Legal Advisor to determine whether Honor procedures should be used or modified to address the apparent conspiracy.

**0416. HONOR BOARD PROCEDURES DURING SUMMER TRAINING.** Processing of alleged honor offenses after the start of Commissioning Week and during Summer Training will comply with this instruction except that the composition of the Brigade Honor Board may be modified as follows:

(1) Presiding Officer: any officer of the Brigade Honor Committee other than the Deputy Chair for Investigations.

(2) Recorder: any First Class Committee member appointed by the Presiding Officer.

(3) Company Honor Representatives: Committee members or other midshipmen of the appropriate class selected by the Presiding Officer.

(4) Members-at-Large: midshipmen of the appropriate class selected by the Presiding Officer.

**0417. PRIVACY OF HONOR PROCEEDINGS/CASE RECORDS**

a. Treat all aspects of the processing of an alleged honor offense as "For Official Use Only." Disclosure of information concerning an alleged offense or identifying the accused, except as authorized by the Brigade Honor Chair or to those with a "need to know," is prohibited. Presiding Officers of honor hearings shall caution everyone present, including each witness, of the private and official nature of the proceedings.

b. To be effective, training on the Honor Concept must include timely, practical examples. Toward this end, summaries of cases at various stages of the process shall be provided to the Brigade as a means of honor training. These summaries may identify the individuals concerned by name and will describe the basic circumstances of the offense, the decision, and the disposition. These summary sheets are for the training of the Brigade only and shall not be discussed with, or released to, anyone outside the Brigade of Midshipmen, Brigade Officers and faculty. The Brigade Honor Committee may also disseminate summaries of cases to the Brigade.

c. Statements and other evidence gathered in an honor investigation may be used in subsequent conduct proceedings. In such a case, the nature of the original investigation will be noted.

d. Statements and other evidence gathered in an honor investigation may be released for official government inquiries such as background investigations for security clearances.

e. Presiding Officers will deliver the records of hearings before the Brigade Honor Board to the Ethics Advisor. In cases resulting in a finding of violation, the Ethics Advisor will forward the record through the chain of review as discussed above. If the final action results in a finding of violation, whether or not the midshipman is separated, the Ethics Advisor will retain the record, including tapes, for two years after the accused midshipman's class graduates. If the case is terminated at any point during the review, the Ethics Advisor will destroy the record and tapes when the midshipman departs the Naval Academy, either through graduation or other means.

f. The Honor Committee may retain summaries of the proceedings in the case after destruction of the record for purposes of administration and analysis. If, during any Board, evidence of a violation of the Administrative Conduct System, in addition to the alleged violation of the Honor Concept, arises, the Presiding Officer may initiate a conduct report or may forward a recommendation to the Commandant that the circumstances be further investigated. Case records may be retained to support action under the Administrative Conduct System when offenses are discovered during honor proceedings.

g. Despite the presence of either a record or a summary of a case, the fact that a midshipman was accused of an honor offense which was terminated SHALL NOT BE USED IN ANY WAY against the accused in a subsequent conduct, honor, or military performance hearing.

**0418. TERMINATION OF PROCESSING** Recommendation for separation by the Commandant for any reason immediately suspends any investigative inquiries and

determinations by the Brigade Honor Chairman regarding the midshipman in question until final endorsement of the Commandant's recommendation for separation has been given by both the Superintendent and the Secretary of the Navy. Upon final endorsement by the Superintendent and the Secretary of the Navy, the case will be terminated. Should the midshipman be retained by either the Superintendent or the Secretary of the Navy, or readmitted to the Naval Academy, the honor investigation will resume at the point where the suspension of the case occurred. When the suspension of the investigation begins, the accused midshipman will sign a written acknowledgment of the suspension.

## CHAPTER 5 MISCELLANEOUS PROVISIONS

### 0501. GRADES

a. Academic Grades. Academic work and the Honor Concept are two distinct educational processes at the Naval Academy. Course instructors evaluate a midshipman's academic work in their individual classes. The Honor Concept separately and equally develops each midshipman's integrity, which is vital to his or her performance as a commissioned officer. In cheating cases involving academic work, the Honor Concept does not affect an instructor's prerogatives in assigning a grade. Likewise, an academic grade cannot be made a punishment for an honor violation.

b. Conduct Grades. Where an honor violation is alleged, the accused will receive a conduct grade of incomplete until the alleged violation is resolved. If a midshipman is found in violation by the Brigade Honor Board and ultimately separated from the Naval Academy, a conduct grade of "F" will be assigned. If a midshipman is found in violation by the Brigade Honor Board but retained, a conduct grade will be assigned as if 100 demerits had been awarded for the violation.

### 0502. EFFECT OF ERROR

a. Prejudicial error is an error which substantially affects the respondent's rights or which affects the final result in the case. The Commandant or Superintendent may correct prejudicial error by:

- (1) Disregarding the affected portion (if that corrects the error),
- (2) Returning the case with appropriate instructions; or,
- (3) Setting aside the findings and directing that a new Brigade Honor Board or Commandant's Hearing be convened.

b. Harmless error (that error not amounting to prejudicial error), does not invalidate the proceedings. If appropriate, the case may be returned for corrective action.

### 0503. ADMISSIBILITY OF EVIDENCE

a. Limitations. Exclusionary rules precluding the use of relevant evidence do not apply. Honor boards will develop all facts relevant to the issue of innocence or guilty. The Presiding Officer conducting the hearing will note for the record the inclusion of any evidence. He may also exclude irrelevant, immaterial, unduly repetitious or incompetent evidence. He may consult with the Legal Advisor prior to making any such ruling. Also precluded from use by any board or the Commandant and Superintendent includes evidence contrary to paragraph 0303 and 0503b-e.

b. Privileged Communications. The rules in the Manual for Courts-Martial, United States, 1984 concerning privileged communications apply to these hearings.

c. Self-incrimination

16 Apr 01

(1) Paragraph 0303 sets forth the accused midshipman's right to remain silent. Brigade Honor Boards shall not consider a confession or admission obtained by unlawful coercion or inducement likely to affect its truthfulness. Not advising a midshipman of all rights under Article 31, UCMJ, the Fifth Amendment to the United States Constitution, or those rights granted under these procedures before a confession or admission is made, does not prevent acceptance of the confession or evidence. The midshipman must object to consideration of any such evidence at the hearing. Failure to object waives any error. The Presiding Officer or other officer conducting the hearing shall note for the record the consideration of the statement, admission, or decision to remain silent.

(2) Midshipmen other than the accused appearing as witnesses at honor hearings are not required to make a statement tending to implicate themselves in any honor offense or conduct offense for which separation is an authorized punishment. This privilege does not extend to statements only tending to expose the witness to disciplinary action less than separation under the Administrative Conduct System. That is, unless separation from the Naval Academy is authorized for the offense and no adjudication of the case has occurred, the Presiding Officer or other hearing officer may require the witness to testify. Midshipmen whose statements might expose them to allegations of a separate honor offense have the rights set forth in paragraph 0503c(1). Witnesses who are not subject to the UCMJ may refuse to make a statement or produce any evidence violating any rights protected by the Fifth Amendment to the United States Constitution. The person must specifically state that the refusal to answer questions is based on the protection offered by the Fifth Amendment. When appropriate or advisable to do so, the Presiding Officer should explain these rights to the witnesses.

d. Bad Faith Unlawful Searches. Proceedings will not consider evidence obtained by a search conducted by an individual acting in an official capacity known as patently unlawful pursuant to the Fourth Amendment to the Constitution of the United States as applied to the military community in cases against the individual whose rights were violated, without the approval of the Legal Advisor.

e. Past Violations. The Brigade Honor Chair, Commandant and Superintendent may consider evidence of past Brigade Honor Board violations, documented formal counseling, and prior performance in the Character Development Program. The Brigade Honor Board shall not admit or consider such evidence.

f. Polygraph Test Results. Polygraph test results are not admissible in Brigade Honor Boards as they drastically reduce the responsibility of the Board members to logically consider evidence gathered in investigations. Any probative value of such test results is greatly outweighed by their prejudicial effect upon Board members.

g. Audio and Video Recordings. Audio and video records of conversations created by the accused or the accuser with regard to an honor violation are not admissible in Brigade Honor Boards as their admission is contrary to the spirit of the Honor Concept of the Brigade of Midshipmen. This does not include fixed surveillance.

h. Electronic Communication and Media. Since government computer systems are subject to monitoring, any electronic communications or files passed over or stored on government computer systems are not the private property of the user and are not subject to the provisions of the Fourth Amendment of the Constitution of the United States. Personal computers owned by midshipman are subject to the provisions of the Fourth Amendment.

**“LIST OF APPENDICES”**

**Appendix A:** Sample Report of Offenses

**Appendix B:** Record of Formal Honor Counseling

**Appendix C:** Waiver of Right Under the Honor Concept

**Appendix D:** Formal Charge Sheet and Accused’s Acknowledgement of Rights

**Appendix E:** Designation as a Member of a Brigade Honor Board

**Appendix F:** Presiding Officer’s Hearing Guide

**Appendix G:** Claim of Waiver and Notice of Intent to Plead Guilty

SAMPLE REPORT OF OFFENSE

Date \_\_\_\_\_

From: Midshipman Second Class W. T. Door  
To: Brigade Honor Committee Chair

Subj : POSSIBLE HONOR VIOLATION

1. On 15 May 1986, at approximately 1040, in Rickover Hall, room 210, I observed Midshipman Second Class J. T. Gish use unauthorized assistance in the completion of an EE 312 one-hour exam in the form of a crib sheet. During the exam, I noticed Midshipman Gish, who sat one row ahead of me in the classroom, look down several times into his lap and refer to a piece of paper held in his left hand. I notified the instructor, Lieutenant Deck, who approached Midshipman Gish, asked him to stand, and found a piece of paper in the accused's hand. The paper contained equations which were pertinent to the exam.

2. The exam was a closed book and closed note exam, thus, I feel Midshipman Gish should be charged with a possible honor violation of the Brigade Honor Concept.

W. T. DOOR

(NOTE: Include name and class of the accused; time, date, and place of the alleged violation; nature of offense (lying, cheating, stealing); any witness(es); a summary of the offense; and sign the report.)

APPENDIX A

\_\_\_\_\_ BHC Init

Record of Formal Honor Counseling

Before beginning this counseling session you should make it clear that you wish to DISCUSS the events retaining your four options. Once satisfied with the discussion and the decision to use formal counseling has been made, follow the instructions on this form.

Counselor \_\_\_\_\_  
Name Class/Title Company/Dept Alpha

Counselee \_\_\_\_\_  
Name Class Company Alpha

Counselor Answers

Date Event Occurred: \_\_\_\_\_ Admittance of guilt? \_\_\_\_\_

Date Found Out: \_\_\_\_\_ Show of remorse? \_\_\_\_\_

Make amends for actions? \_\_\_\_\_

Do you agree with the facts? \_\_\_\_\_

Violation: \_\_\_\_\_ Do you consider this person remediated? \_\_\_\_\_

***For Counseling to be within the spirit of the Honor Concept, the first four blocks must be marked.***

Case Facts:

Counselor's Statement: (to be written by the Counselor)  
(This includes the case facts and how you became involved)

Counselee: (to be written by Counseled Midshipman)

(This is to include the Counseled Midshipman's side of the story, there should be open admittance to guilt, remorse and corrective action to be taken.)

Miscellaneous Comments:

example: I strongly feel this was resolved through counseling or I think that the Brigade Honor Chair should review all evidence and the decision to retain counseling or forward as an accusation.

Signatures: \_\_\_\_\_  
Counselor Counseled Midshipman BHC

\*Note: in signing this form both parties have come to reach an acceptable solution to the honor offense that coincides with the spirit of the honor concept. This form is to be signed at the end of the counseling session. Formal Honor Counseling is not complete until thoroughly reviewed by the Brigade Honor Chair. At any time before the Brigade Honor Chair signs the counseling form it can be overturned and forwarded as a possible honor offense.

USNAINST 1610.3F CH-2  
16 Apr 01

BRIGADE HONOR COMMITTEE  
UNITED STATES NAVAL ACADEMY  
ANNAPOLIS, MD 21402

**PRIVATE OFFICIAL**

From: Midshipman \_\_\_/C \_\_\_\_\_ Co. \_\_\_\_\_  
To: Brigade Honor Committee

Subj: WAIVER OF RIGHT

Ref: (a) USNAINST 1610.3F (Honor Concept)

1. I have been advised of my right to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. I have reviewed reference (a) and have discussed the above with my Midshipman Advisor. Understanding my rights, I voluntarily, without coercion or threat of any kind, give up my right as described above as defined and set forth in reference (a).  
\_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
Accused

DATE \_\_\_\_\_ TIME \_\_\_\_\_ SIGNATURE \_\_\_\_\_  
Witness

Date: \_\_\_\_\_

From: Investigating Officer

To: Midshipman \_\_\_\_\_, U.S. Navy

Subj: ALLEGED VIOLATION OF THE HONOR CONCEPT

Ref: (a) USNAINST 1610.3F

Encl: (1) Evidence package

1. In accordance with reference (a), you are charged with the following violation(s):  
In that on or about \_\_\_\_\_

---

SEE ATTACHED SHEET FOR ADDITIONAL CHARGES.

2. Enclosure (1) is a copy of all evidence pertinent to your case.

3. By return endorsement hereon, you are requested to acknowledge receipt of this correspondence, together with a copy for your retention.

4. Your attention is invited with alleged Honor violations. Your case will be heard by a Brigade Honor to the provisions of reference (a) pertaining to the convening of Brigade Honor Boards in connection Board on \_\_\_\_\_ at \_\_\_\_\_ at the following place:  
\_\_\_\_\_.

\_\_\_\_\_  
Midshipman \_\_\_\_\_, USN

FIRST ENDORSEMENT

From: Midshipman \_\_\_\_\_, U.S. Navy

To: Investigating Officer

1. Returned, receipt acknowledged.
2. I understand that if I am found in violation of the Honor Concept, I may be separated from the Naval Academy and required by the Secretary of the Navy to reimburse the United States for the costs associated with my advanced education.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Accused

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

NOTIFICATION OF POTENTIAL REIMBURSEMENT FOR ADVANCED EDUCATION

Date: \_\_\_\_\_

Ref: (a) 10 U.S.C. 2005

1. Reference (a) requires that all naval personnel, who have received benefits of any advanced education and who are personally involved in administrative, nonjudicial, or judicial proceedings as a result of allegations of misconduct, be informed, prior to making any decision relative to those proceedings, that they may be required by the Secretary of the Navy to reimburse the United States for the costs associated with their advanced education.

2. This advisement supplements the prior notices concerning the service obligation of midshipmen (active duty or financial recoupment of the costs of education) that were provided to you prior to your induction to the Naval Academy and upon commencement of your second class academic year.

ACKNOWLEDGMENT

I HAVE READ AND UNDERSTAND THE FOREGOING STATEMENT  
CONCERNING POTENTIAL FINANCIAL OBLIGATION SHOULD I BE SEPARATED  
FROM THE NAVAL ACADEMY AS A RESULT OF AN HONOR VIOLATION.

\_\_\_\_\_/\_\_\_\_\_  
ACCUSED / DATE

WITNESSED:

---

MIDSHIPMAN ADVISOR

### **RIGHTS OF THE ACCUSED**

Any midshipman accused of an honor violation has the following rights:

1. To have all proceedings and information concerning a pending or completed investigation of an honor offense kept private to the maximum extent possible. The Brigade Honor Committee and the Naval Academy will not publicly identify the accused or respond to external inquiries without the consent of the accused.
2. To free consultation. The Honor Concept provides a Midshipman Advisor to assist in the defense of the accused. If further assistance is desired, the Office of Legal Counsel in Mahan Hall provides qualified military counsel to advise the accused. While an accused midshipman may use any source to prepare for an honor hearing, that midshipman, assisted by the Midshipman Advisor, must present his or her case in any hearing before the Brigade Honor Board or the Commandant. The accused midshipman may seek counsel outside of the Honor Board hearing room and, at the discretion of the Presiding Officer, be allowed reasonable opportunity, in frequency and duration, to consult with such counsel during the hearing. Other advisors are not permitted inside a Brigade Honor Board, but may remain in the vicinity of the hearing room. In cases of extraordinary complexity or those involving technical expert advice, the accused may request in writing that counsel be permitted to attend the Commandant's hearing. The Commandant may approve or deny such a request and specify the role of counsel.
3. To choose his or her Midshipman Advisor from among elected company representatives.
4. To be provided copies of all evidence when served with charges. This shall occur at least three days prior to the hearing in order to allow an accused to prepare his or her case after being served with the formal charges. The day of service will not be counted, but the day of the first hearing in the case will be counted. Saturdays, Sundays, and federal holidays are not counted.
5. To be present with his or her Midshipman Advisor at open sessions of the Board during the hearing of his or her case.
6. To confront his or her accuser.
7. To challenge members of the Board for cause; that is, for a reason which would prevent a member from being impartial.
8. To examine all physical or documentary evidence in the case and to present such evidence in his or her own behalf.



## INFORMATION FOR THE ACCUSED

### Forms.

1. **RIGHTS OF THE ACCUSED** – This form should be signed and witnessed before the investigating officers question you.

2. **NOTIFICATION OF ACCUSATION** -This form is merely a written notice to inform you that you have been accused of violating the Honor Concept. It should not be confused with the Formal Charge Sheet.

3. **FORMAL CHARGE SHEET** -This sheet states the specific charge(s) for which you may be charged. At the time of signing, the investigating officers should present you with the material evidence that they have collected during their investigation. This evidence is for your examination but must be returned to the investigating officers prior to the commencement of the Brigade Honor Board. From the time you sign this form, you will be given three working days until a Brigade Honor Board will be held. The three working day period is yours, by right, for preparing yourself for the Brigade Honor Board.

4. **WAIVERS**- If you wish to waive any of your rights, inform the investigating officers. They will require you to sign a written waiver of the specific rights that you wish to waive.

### General.

1. You should be familiar with the Honor Concept. Read USNAINST 1610.3F.

2. You should be sure that you understand your rights and that your advisor has made you familiar with Honor Committee procedures and hearings.

3. If you desire to call any witnesses on your behalf at any board, you must inform them of the time and location of the board and ensure their presence.

4. If you desire to submit any written documents in your behalf, give them to the investigating officers well before any proceedings so that they may make copies to be distributed to the members of the Honor Board.

5. Resignations are not normally accepted while an alleged offense is being processed. You may, however, submit a resignation in the following circumstances:

- a. You fully understand all your rights;
- b. You no longer desire to remain at USNA; and
- c. The commandant approves your request to submit a resignation.

If you have any questions regarding qualified resignations, contact the Commandant's Legal Advisor.

USNAINST 1610.3F CH-2

16 Apr 01

Date: \_\_\_\_\_

From: Brigade Honor Chairman

To: Midshipman \_\_\_\_\_, U.S. Navy

Subj: DESIGNATION AS A MEMBER OF A BRIGADE HONOR BOARD

Ref: (a) USNAINST 1610.3F

1. You have been selected to serve as a member of a Brigade Honor Board, which will convene at \_\_\_\_\_ on \_\_\_\_\_.
2. You should familiarize yourself with the contents of reference (a) regarding the conduct of Honor Board proceedings and your duties as a member of the Brigade Honor Board. As a Board member, you must be free from bias or prejudice, either for or against the accused, which would prevent you from making a fair decision based solely on the facts presented at the Board. You may use your general knowledge of the Naval Academy and individual experience to evaluate a case. However, you may not rely on your own personal knowledge of the case or on any other matter not presented during open sessions of the Board. If you feel that you are unable to render a fair vote because of bias, prejudice, or prior knowledge of the case, bring the matter to my attention and I will excuse you without further discussion.
3. Membership on the Brigade Honor Board takes precedence over all other activities. If a serious conflict should arise, contact me immediately for assistance. In any event, contact your battalion representative prior to 2300 this evening to confirm your participation. You should also advise your chain of command of this obligation.

/s/ Brigade Honor Chairman

CHARGE TO THE BOARD AND INSTRUCTIONS FOR OBSERVERS

(Not Recorded)

I. Read the Charge to the Board

THIS BOARD IS CHARGED WITH THE RESPONSIBILITY OF DETERMINING WHETHER OR NOT A MEMBER OF THE BRIGADE HAS VIOLATED THE HONOR CONCEPT OF THE BRIGADE OF MIDSHIPMEN BEAR IN MIND THAT THE ESSENTIAL FUNCTION OF THE BOARD IS TO HEAR EVIDENCE AND DETERMINE FACTUALLY IF THE CHARGE (S) ALLEGED IS/ARE TRUE .A PROBING AND AGGRESSIVE HEARING IS NOT ONLY PROPER, BUT EXPECTED; HOWEVER, IT MUST BE CONDUCTED IN A PROFESSIONAL, NON-ADVERSARIAL MANNER. THEREFORE, THIS BOARD WILL BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING STANDARDS:

- a. ALL PROCEDURES AS DEFINED IN THE HONOR CONCEPT WILL BE STRICTLY FOLLOWED.
- b. THE RIGHTS OF THE ACCUSED WILL BE CAREFULLY PROTECTED AT ALL TIMES. SPECIFICALLY, THE RIGHT TO BE HEARD BY AN UNBIASED BOARD AND THE RIGHT TO PRESENT EVIDENCE WILL BE PROTECTED, AMONG OTHER RIGHTS OF THE ACCUSED.
- c. THERE WILL BE .NO- DISCUSSION OR WEIGHING OF ANY EVIDENCE WHILE THE BOARD IS IN OPEN SESSION. THERE WILL BE NO INFERENCES DRAWN OR EXPRESSED DURING OPEN SESSION ON EVIDENCE PRESENTED.
- d. THE ACCUSED WILL BE ASKED ONE QUESTION AT A TIME AND WILL BE ALLOWED TO ANSWER COMPLETELY BEFORE BEING ASKED ANOTHER QUESTION. MEMBERS WILL TAKE TURNS IN QUESTIONING THE ACCUSED BEFORE ASKING EACH QUESTION, INTRODUCE YOURSELF. IF A BOARD MEMBER IS PURSUING A LINE OF QUESTIONING, THE MEMBER WILL BE ALLOWED TO COMPLETE THAT QUESTIONING. IF I FEEL THAT A LINE OF QUESTIONING IS NOT PERTINENT OR IS NOT ADMISSIBLE I WILL ASK YOU FOR AN EXPLANATION OF ITS PURPOSE, THEN PERMIT YOU TO CONTINUE OR ASK YOU TO WITHDRAW OR RE-PHRASE THE QUESTION. I WILL DO THE SAME IF REQUIRED, WHEN THE ACCUSED IS QUESTIONING A WITNESS.
- e. THERE WILL BE NO OUTBURST OF EMOTION, I.E., DISBELIEF, ANGER, FRUSTRATION, ETC. 1 BY ANY BOARD MEMBER IN REACTION TO AN ANSWER BY ANY WITNESS, INCLUDING THE ACCUSED. IF YOU DISAGREE WITH A REPLY BY A WITNESS OR THE ACCUSED, BRING IT TO THE ATTENTION OF THE BOARD DURING CLOSED SESSION.
- f. THESE PROCEEDINGS ARE PRIVATE, AND SHOULD NOT BE DISCUSSED WITH ANYONE NOT INVOLVED WITH THE CASE. FURTHER, NOTE THAT THE CLOSED SESSION DISCUSSIONS SHOULD BE HANDLED WITH ABSOLUTE PRIVACY AND WILL NOT BE DISCUSSED WITH ANYONE NOT PRESENT DURING THE CLOSED SESSION DISCUSSION.

**ARE THERE ANY QUESTIONS BEFORE WE PROCEED?**

II. Read the Instructions to Observers (if applicable)

FOR THOSE OBSERVERS PRESENT AT THE PROCEEDINGS, YOU ARE REMINDED THAT YOU ARE HERE TO OBSERVE A CONFIDENTIAL HEARING, NONE OF THE INFORMATION OF THIS CASE MAY BE DISCUSSED WITH ANYONE OUTSIDE OF THE HEARING. YOU ARE REMINDED THAT YOU MAY BE EXCUSED AT MY DISCRETION AND WITH THE ACCUSED'S PERMISSION. YOU WILL NOT BE PRESENT FOR CLOSED SESSION DISCUSSIONS. IF THERE ARE ANY OBJECTIONS TO WHAT I HAVE SAID, COME FORWARD AT THIS TIME.

III. Remind the Board Members of the following:

THESE HEARINGS ARE LISTED AS PRIVATE AND OFFICIAL AND SHALL NOT BE DISCLOSED TO ANY PERSON NOT PRESENT HERE .ANY DISCUSSION WILL TAKE PLACE DURING CLOSED SESSION AND AMONG ALL THOSE PRESENT WHEN THE BOARD IS IN CLOSED SESSION. DO NOT DISCUSS THE CASE DURING A RECESS CALLED NOR AFTER THE BOARD IS ADJOURNED.

A. Instruct those members who have not sat on a Brigade Honor Board about the board process.

B. Instruct new members what open/closed sessions are and 4 remind them that anyone may call for one.

C. Discuss the meaning of preponderance of the evidence.

-Provide the following instructions to the Board members:

-- YOU ARE REMINDED THAT, IN ORDER TO FIND THAT A VIOLATION OF THE HONOR CONCEPT WAS COMMITTED, YOU MUST BE CONVINCED BY A PREPONDERANCE OF THE EVIDENCE PREPONDERANCE OF THE EVIDENCE IS THE STANDARD OF PROOF WHICH IS MET WHEN THE EVIDENCE INDICATES THAT IT IS "MORE LIKELY THAN NOT" THAT THE ACCUSED COMMITTED THE VIOLATION ALLEGED. YOU MUST ALSO FIND THAT SUFFICIENT EVIDENCE EXISTS FOR EACH OF THE CHARGES PRESENTED.

D. Remind the Board of the importance of confidentiality.

E. Call the accused/advisor and I/O into the Boardroom.

**BOARD PROCEDURE PRIOR TO READING THE CASE PACKETS**

(Recorded)

**I. Call to Order**

THE BRIGADE BOARD IS CALLED TO ORDER

MIDSHIPMAN accused, WILL YOU PLEASE INTRODUCE YOURSELF AND YOUR ADVISOR TO THE BOARD?

(If the accused has waived the right to an advisor, make sure the waiver is in writing, and have the accused acknowledge the waiver on the record.)

MIDSHIPMAN advisor, ARE YOU PRESENTLY A COMPANY HONOR REPRESENTATIVE? (answer must be yes }

**II. Presentation of Charge**

A. Ensure you are prepared to read the formal charge.

B. Read the correct definition for each charge.

WE ARE ABOUT TO HEAR EVIDENCE PRESENTED CONCERNING AN ALLEGED VIOLATION OF OUR HONOR CONCEPT BY A MEMBER OF THE BRIGADE. THIS MIDSHIPMAN IS CHARGED AS FOLLOWS: (read the formal charge). I WISH TO POINT OUT THAT IN ORDER TO ARRIVE AT A FINDING THAT THE HONOR CONCEPT HAS BEEN VIOLATED, THE BOARD MUST BE SATISFIED BY A PREPONDERANCE OF THE EVIDENCE PRESENTED THAT THIS ACCUSED MIDSHIPMAN HAS COMMITTED AN HONOR VIOLATION AS SET FORTH AND DEFINED IN OUR HONOR CONCEPT THE HONOR CONCEPT DEFINES THIS ACT AS FOLLOWS: (use 1, 2, or 3 as appropriate)

(1) LYING: TO STATE AN ORAL OR WRITTEN UNTRUTH WITH THE INTENT TO DECEIVE .IT IS A LIE TO KNOWINGLY MISREPRESENT THE TRUE SITUATION OR TO DECEIVE BY WITHHOLDING, OMITTING OR SUBTLY WORDING INFORMATION IN SUCH A WAY AS TO LEAVE AN ERRONEOUS OR FALSE IMPRESSION OF THE KNOWN TRUE SITUATION. THE MISREPRESENTATION MAY BE EITHER BY WORD OR BY DEED.

(2) CHEATING: TO KNOWINGLY USE UNAUTHORIZED ASSISTANCE IN SUBMITTED WORK AS ONE'S OWN EFFORTS OR TO KNOWINGLY SUBMIT ANOTHER'S WORK OR IDEAS CLAIMING THEM AS ONE ' S OWN BY NOT GIVING PROPER REFERENCE TO THAT WORK. GIVING OR RECEIVING ASSISTANCE IS ALLOWED AND ENCOURAGED ON HOMEWORK ASSIGNMENTS UNLESS PROHIBITED BY THE INSTRUCTOR. RECEIVING ASSISTANCE ON INDIVIDUAL ASSIGNMENTS, OTHER THAN HOMEWORK, IS PERMITTED ONLY WHEN A MIDSHIPMAN'S INSTRUCTOR SPECIFICALLY ALLOWS IT. IT IS ALSO CHEATING TO DERIVE AN UNFAIR ADVANTAGE BY ONE ' S ACTIONS.

(3) STEALING: WRONGFULLY TAKING, OBTAINING, OR WITHHOLDING PROPERTY OR ANYTHING OF VALUE FROM THE POSSESSION OF THE TRUE OWNER WITH THE INTENTION OF DEPRIVING THE OWNER OF ITS USE OR POSSESSION FOR ANY PERIOD OF TIME. THIS INCLUDES FRAUDULENTLY OBTAINING SERVICES.

16 Apr 01

MIDSHIPMAN (accused) \_\_\_\_\_, DO YOU UNDERSTAND THE CHARGE FOR WHICH YOU HAVE BEEN BROUGHT BEFORE THIS BOARD? (response) AND DO YOU UNDERSTAND THE DEFINITION READ TO YOU?

III. Waiver of Right (if applicable)

IT HAS COME TO MY ATTENTION THAT YOU WISH TO WAIVE YOUR RIGHT TO:

Read from written waiver if available.

DO YOU UNDERSTAND THIS RIGHT?

HAVE YOU DISCUSSED IT WITH YOUR ADVISOR?

HAS ANYONE FORCED YOU TO GIVE UP THIS RIGHT?

DO YOU NOW WISH TO WAIVE THIS RIGHT?

VOIR DIRE

DOES ANY BOARD MEMBER KNOW THE ACCUSED? (IF YES)

1. MIDSHIPMAN \_\_\_\_\_ PLEASE STATE THE CIRCUMSTANCES SURROUNDING YOUR KNOWLEDGE OF THE ACCUSED.

2. DO YOU FEEL IT WILL AFFECT YOUR JUDGMENT IN ANY WAY?

DOES ANY BOARD MEMBER FEEL THAT HE OR SHE WOULD GIVE MORE OR LESS WEIGHT TO THE TESTIMONY OR WRITTEN STATEMENT OF THE ACCUSER, A WITNESS, OR THE ACCUSED SOLELY BECAUSE OF HIS OR HER RANK OR STATUS AS A MIDSHIPMAN, CIVILIAN, OR MILITARY MEMBER?

1. (if any member responds) MIDSHIPMAN (board member) \_\_\_\_\_, THE BOARD WILL BE RECESSED WHILE YOU INFORM ME OF YOUR INFORMATION OR FEELINGS ON THIS MATTER.

2. (if there is no reply) NO MEMBER HAS RESPONDED, ALL ARE CONSIDERED ABLE TO RENDER AN UNBIASED VOTE.

THE PRESIDING OFFICER NOW INTRODUCES THE MEMBERS OF THE BOARD.

MIDSHIPMAN (accused) \_\_\_\_\_, BE ADVISED THAT MIDSHIPMAN (board member) IS FROM \_\_\_\_\_ COMPANY AND IS A MEMBER OF (ECA or Sport).

MIDSHIPMAN (accused), ARE THERE ANY QUESTIONS YOU WOULD LIKE TO ASK THE BOARD CONCERNING THEIR ABILITY TO RENDER AN UNBIASED VOTE?

MIDSHIPMAN (accused), IS THERE ANY MEMBER OF THE BOARD YOU WISH TO CHALLENGE?

1. (if YES) **MIDSHIPMAN** (accused) , **PLEASE PRESENT THE REASONS FOR YOUR CHALLENGE.**

THE BOARD WILL RECESS WHILE I CONSIDER THE CHALLENGE.

a. **MIDSHIPMAN** (accused) , **I HAVE OVERRULED YOUR CHALLENGE.**

OR

b. **MIDSHIPMAN** (accused) , **I HAVE SUSTAINED YOUR CHALLENGE. THIS BOARD IS RECESSED UNTIL PROPER MEMBERSHIP IS AGAIN PRESENT.** (Appoint a new Member, review the Charge to the Board, and questions on bias. Give the accused the chance to challenge the new Member on the record.).

MIDSHIPMAN (accused), YOU HAVE BEEN PROVIDED WITH A COPY OF ALL DOCUMENTARY EVIDENCE WHICH THE INVESTIGATING OFFICER WILL PRESENT TO THE BOARD. DO YOU HAVE ANY OBJECTION TO THE BOARD'S CONSIDERATION OF THIS EVIDENCE?

[If yes, excuse the Board members to discuss the objection. Discussion should be recorded. If Presiding Officer elects to sustain objection, evidence should be removed at this time.]

[Recall Board members.]

THE BOARD WILL NOW GO INTO CLOSED SESSION TO READ THE CASE PACKETS. ALL EVIDENCE WILL BE CONSIDERED. [THE ACCUSED'S OBJECTION IS NOTED FOR THE RECORD.

BOARD PROCEDURE FOR A PLEA OF NOT GUILTY

(Recorded)

I. Investigating officer's Presentation

**MIDSHIPMAN \_\_\_\_\_ (IO) \_\_\_\_\_, PLEASE PRESENT YOUR CASE.**

(after the Board has had a chance to ask questions of each witness): **DOES THE ACCUSED HAVE ANY QUESTIONS FOR THE WITNESS?**

(when there are no more questions) ARE THERE ANY FURTHER QUESTIONS FOR THE WITNESS? MIDSHIPMAN/LCDR/MR., ETC. (witness), YOU ARE EXCUSED. THANK YOU FOR ATTENDING. YOU ARE REMINDED THESE HEARINGS ARE PRIVATE AND ARE REQUESTED NOT TO DISCUSS THIS CASE WITH ANYONE EXCEPT THE INVESTIGATING OFFICER, IF NECESSARY.

A. (if the accuser) YOU MAY FIND A SEAT IN THE BACK OF THE ROOM AND REMAIN FOR THE REST OF THE PROCEEDINGS IF YOU SO CHOOSE.

B. (if any other witness) YOU MAY WAIT OUTSIDE OR RETURN TO COMPANY AREA, WHERE WE ASK THAT YOU REMAIN IN UNIFORM AND IN YOUR ROOM FOR THE REMAINDER OF THE BOARD.

II. Accused's Presentation

MIDSHIPMAN (accused), BEFORE YOU PRESENT YOUR CASE, I WISH TO REMIND YOU THAT YOU HAVE BEEN CHARGED WITH VIOLATING THE HONOR CONCEPT BY (LYING/CHEATING/STEALING). IF IT IS THE BOARD'S FINDING THAT YOU HAVE VIOLATED THE HONOR CONCEPT, THAT FINDING WILL BE FORWARDED TO THE COMMANDANT OF MIDSHIPMEN FOR APPROPRIATE ACTION BY HIM. [I/C or 2/C cases only: IF YOU ARE SEPARATED FROM THE NAVAL ACADEMY, YOU MAY BE REQUIRED BY THE SECRETARY OF THE NAVY TO REIMBURSE THE UNITED STATES FOR THE COSTS OF YOUR ADVANCED EDUCATION.]

YOU HAVE HEARD OR EXAMINED THE EVIDENCE PRESENTED SO FAR. YOU MAY PRESENT EVIDENCE YOURSELF, INCLUDING YOUR OWN STATEMENT AND ANY PERTINENT WITNESSES. YOU WILL ALSO BE GIVEN AN OPPORTUNITY TO PRESENT A FINAL STATEMENT CONCLUDING OR SUMMARIZING YOUR VIEW OF THE CASE. HOWEVER, YOU HAVE THE RIGHT TO REMAIN SILENT AT THIS HONOR HEARING.

IF YOU CHOOSE TO REMAIN SILENT, YOUR CASE WILL NOT BE PREJUDICED. IF YOU ELECT TO MAKE A STATEMENT AS EVIDENCE AT THIS HEARING, THE BOARD MEMBERS MAY QUESTION YOU REGARDING YOUR STATEMENT AND WHAT YOU SAY MAY BE USED AGAINST YOU IN ANY FURTHER PROCEEDINGS. A FINAL STATEMENT IS NOT CONSIDERED AS EVIDENCE. YOU ARE NOT REQUIRED TO ANSWER ANY QUESTIONS, BUT ARE ENCOURAGED TO DO SO, THAT THE BOARD MAY UNCOVER ALL THE FACTS IN THIS CASE.

IF, AFTER PRESENTING YOUR OWN ORAL OR WRITTEN STATEMENT AS EVIDENCE, YOU REFUSE TO ANSWER QUESTIONS FROM THE BOARD REGARDING MATTERS PERTAINING TO THE STATEMENT, THE PRESIDING OFFICER MAY DIRECT THAT YOUR TESTIMONY/STATEMENT NOT BE CONSIDERED OR BOARD MEMBERS MAY CONSIDER YOUR REFUSAL IN DETERMINING WHAT WEIGHT, IF ANY, TO GIVE TO YOUR STATEMENT DURING DELIBERATIONS.

MIDSHIPMAN (accused), YOU MAY NOW PRESENT YOUR CASE.

(at the conclusion of testimony)

MIDSHIPMAN (accused), HAVE YOU PRESENTED ALL YOUR EVIDENCE WITH THE EXCEPTION OF YOUR FINAL STATEMENT?

MIDSHIPMAN (1/0), DO YOU HAVE ANY ADDITIONAL WITNESSES IN REBUTTAL?

DOES THE BOARD DESIRE TO CALL ANY MORE WITNESSES?

MIDSHIPMAN (accused), YOU HAVE THE OPPORTUNITY TO PRESENT A FINAL STATEMENT CONCLUDING OR SUMMARIZING YOUR VIEW OF THE CASE. THE PURPOSE OF YOUR FINAL STATEMENT IS NOT TO PRESENT FURTHER EVIDENCE, BUT TO EXPLAIN YOUR VIEW OF THE EVIDENCE ALREADY PRESENTED. DO YOU DESIRE A RECESS IN ORDER TO PREPARE SUCH A STATEMENT?

A. (if YES) : THE BOARD IS RECESSED TO ALLOW MIDSHIPMAN (accused) TO PREPARE A FINAL STATEMENT.

B. (if NO) : MIDSHIPMAN (accused), PLEASE PRESENT YOUR FINAL STATEMENT .

### III. Closing

WE HAVE NOW HEARD ALL THE EVIDENCE CONCERNING THE ALLEGED VIOLATION OF THE HONOR CONCEPT. IF, AS A RESULT OF THIS HEARING, A MEMBER OF THE BOARD FINDS BY A PREPONDERANCE OF THE EVIDENCE THAT THE ACCUSED HAS COMMITTED THE VIOLATION CHARGED AS SET FORTH AND DEFINED IN THE HONOR CONCEPT, THEN THAT MEMBER MUST VOTE THAT AN HONOR VIOLATION HAS BEEN COMMITTED. IF, IN THE BOARD MEMBER'S JUDGMENT, THE EVIDENCE IS NOT SUFFICIENT TO SUPPORT A VIOLATION, THEN THAT MEMBER MUST VOTE THAT NO VIOLATION HAS BEEN COMMITTED. THE BOARD WILL NOW GO INTO CLOSED SESSION TO VOTE BY SECRET WRITTEN BALLOT.

(the Board must vote separately on multiple charges)

A. (if vote is "Violation") : MIDSHIPMAN (accused), THE BRIGADE HONOR BOARD HAS VOTED AND FOUND THAT YOU HAVE COMMITTED THE VIOLATION (S) OF (LYING/CHEATING/STEALING). YOUR CASE WILL BE FORWARDED TO THE

16 Apr 01

COMMANDANT OF MIDSHIPMEN. ALL PERSONS PRESENT DURING THESE PROCEEDINGS ARE REMINDED TO LIMIT THEIR DISCUSSION OF THIS CASE TO THOSE PRESENT. THE BOARD IS NOW CLOSED.

B. (if vote is "No Violation") : MIDSHIPMAN (accused). THE BRIGADE HONOR BOARD HAS VOTED AND FOUND YOU IN "NO VIOLATION" OF THE HONOR CONCEPT, BASED ON THE EVIDENCE PRESENTED. RECORDS OF THIS CASE WILL BE DESTROYED ONE YEAR FROM THE DATE OF TERMINATION. THE COMMANDANT WILL BE INFORMED OF THE RESULTS OF THIS HEARING. HOWEVER, THIS WILL NOT AFFECT THE BOARD'S DECISION, WHICH IS FINAL. ALL PERSONS PRESENT DURING THESE PROCEEDINGS ARE REMINDED TO LIMIT THEIR DISCUSSION OF THIS CASE TO THOSE PRESENT. THE BOARD IS NOW CLOSED.

BOARD PROCEDURE FOR A PLEA OF GUILTY

(Recorded)

MIDSHIPMAN (accused), IT HAS COME TO MY ATTENTION THAT YOU MAY DESIRE TO PLEAD GUILTY TO THE CHARGE(S) .IN ORDER FOR YOUR PLEA OF GUILTY TO BE ACCEPTED, YOU ARE REQUIRED TO ANSWER THE FOLLOWING QUESTIONS. BASED ON YOUR RESPONSES TO THE QUESTIONS AND THE CORROBORATING EVIDENCE, THE BOARD WILL VOTE TO ACCEPT OR REJECT YOUR PLEA OF GUILTY. ARE YOU READY TO PROCEED? (Response) PLEASE REFER TO THE ENCLOSURE OF THE EVIDENCE PACKET WHICH IS MARKED AS "NOTICE OF INTENT TO PLEAD GUILTY."

1. HAVE YOU READ THAT THOROUGHLY?
2. DO YOU UNDERSTAND IT?
3. WHO INITIATED THE IDEA TO PLEAD GUILTY?
4. DID ANYONE TRY TO THREATEN OR COERCE YOU TO PLEAD GUILTY?
5. ARE YOU PLEADING GUILTY OF YOUR OWN FREE WILL?
6. DO YOU UNDERSTAND THAT BY PLEADING GUILTY, YOU ADMIT THAT YOU HAVE VIOLATED THE HONOR CONCEPT AS SET FORTH IN THE CHARGE (S) TO WHICH YOU PLEAD GUILTY?
7. (if pleading guilty to at least one, but not all charges): DO YOU UNDERSTAND THAT YOU RETAIN YOUR FULL RIGHTS WITH REGARD TO ALL CHARGES EXCEPT THE ONE (S) TO WHICH YOU HAVE PLED GUILTY?
8. DO YOU UNDERSTAND THAT, BASED ON YOUR PLEA OF GUILTY YOU MAY BE SEPARATED FROM THE NAVAL ACADEMY [1/C or 2/C cases only: AND MAY BE REQUIRED BY THE SECRETARY OF THE NAVY TO REIMBURSE THE UNITED STATES FOR THE COSTS OF YOUR ADVANCED EDUCATION?]
9. DO YOU UNDERSTAND THAT DESPITE THIS FORM, YOU CAN CHANGE YOUR PLEA NOW AND PLEAD NOT GUILTY?
10. DO YOU STILL DESIRE TO PLEAD GUILTY? THE HONOR CONCEPT REQUIRES THAT A PLEA OF GUILTY BE CORROBORATED BY OTHER EVIDENCE. CORROBORATING EVIDENCE NEED NOT PROVE EACH ELEMENT OF THE OFFENSE, BUT RATHER NEEDS ONLY BE SUFFICIENT TO JUSTIFY AN INFERENCE THAT THE OFFENSE WAS COMMITTED. THE BOARD WILL NOW ASK YOU SOME QUESTIONS ABOUT THE VIOLATION(S) TO WHICH YOU HAVE PLEADED GUILTY. THE PURPOSE OF THESE QUESTIONS IS TO DETERMINE WHETHER YOUR PLEA IS KNOWING, INTELLIGENT AND VOLUNTARY.

[Note for Presiding Officer: Ensure that the issue of intent is resolved to the Board's satisfaction.]

16 Apr 01

MIDSHIPMAN (accused), YOU HAVE THE OPPORTUNITY TO PRESENT A FINAL STATEMENT CONCLUDING OR SUMMARIZING YOUR VIEW OF THE CASE. THE PURPOSE OF YOUR FINAL STATEMENT IS NOT TO PRESENT FURTHER EVIDENCE BUT TO EXPLAIN YOUR VIEW OF THE EVIDENCE ALREADY PRESENTED. DO YOU DESIRE A RECESS IN ORDER TO PREPARE SUCH A STATEMENT?

A. (if YES): TEE BOARD IS RECESSED TO ALLOW MIDSHIPMAN (accused), TO PREPARE A FINAL STATEMENT.

B. (if NO): MIDSHIPMAN (accused); PLEASE PRESENT YOUR FINAL STATEMENT.

### III. Closing

THE BOARD HAS NOW HEARD ALL THE CORROBORATING EVIDENCE .IF THE MEMBERS OF THE BOARD FIND THAT AN OFFENSE HAS BEEN COMMITTED AND THAT THE GUILTY PLEA WAS KNOWING, INTELLIGENT AND VOLUNTARY, THEY MUST VOTE TO ACCEPT THE GUILTY PLEA .THE BOARD WILL NOW GO INTO CLOSED SESSION TO VOTE.

A. (if the guilty plea is accepted): THE BOARD HAS VOTED TO ACCEPT YOUR PLEA OF GUILTY. YOUR CASE WILL BE FORWARDED TO THE COMMANDANT OF MIDSHIPMEN .ALL PERSONS PRESENT DURING THESE PROCEEDINGS ARE REMINDED TO LIMIT THEIR DISCUSSION OF THIS CASE TO THOSE PRESENT .THE BOARD IS NOW CLOSED.

B. (if the guilty plea is not accepted): THE BOARD HAS VOTED TO REJECT YOUR PLEA OF GUILTY A PLEA OF NOT GUILTY HAS BEEN ENTERED FOR YOU. THE BOARD IS INSTRUCTED THAT THEY MUST NOT CONSIDER ANY PREVIOUS MENTION OF A GUILTY PLEA FOR ANY PURPOSE.

THE CASE MUST BE DECIDED SOLELY ON THE BASIS OF THE EVIDENCE PRESENTED LATER IN TEE HEARING. IS THERE ANY MEMBER OF THE BOARD WHO IS UNABLE TO COMPLETELY DISREGARD THE PREVIOUS DISCUSSION OF A GUILTY PLEA?

1. (if no one responds): NO MEMBER HAS RESPONDED.

2. (if a member responds, treat it as a normal claim of bias as found in Case Procedure Prior to Reading the Case Packets)

DOES EITHER THE INVESTIGATING OFFICER. OR THE ACCUSED REQUIRE ADDITIONAL TIME TO OBTAIN WITNESSES OR OTHER EVIDENCE?  
(granting a delay is within the Presiding officer's discretion)

(go to the Board Procedures for a Not Guilty Plea, and begin at the IO's presentation)

SPECIAL INSTRUCTIONS

A. Intent

1. In lying, cheating, or stealing, the state of mind of the accused is critical. To be guilty, an accused must have the necessary state of mind. For lying, one must have intended to deceive. For cheating, one must have intended to use unauthorized assistance or to represent another's work as one's own. For stealing, one must have intended to deprive the owner, either temporarily or permanently, of the use or possession of the property. The midshipman need not intend to commit an honor violation, but only complete the action with the state of mind described.

2. Direct evidence; e.g., words used by the accused expressing an intent; or indirect evidence; e.g., circumstances surrounding the alleged honor violation from which one might, according to the common experience of mankind, reasonably infer the existence of an intent; may establish a guilty state of mind. The Honor Board may justifiably infer that the accused intended the natural and probable consequences of any act purposely completed. The weight, if any, given to an inference of the accused's intent depends upon the circumstances giving rise to the inference as well as all the evidence in the case, and must be resolved on a case by case basis.

B. Written Statements (witnesses not physically present)

Enclosure \_\_\_\_\_ to the evidence packet is an unsworn written statement. You are advised that an unsworn written statement is an authorized means to bring information to the attention of the Board, and must be given appropriate consideration. The weight and significance to be attached to an unsworn written statement rests within your sound discretion. In deciding what weight to give to the evidence, you may consider that the statement is not under oath, its inherent probability or improbability, whether it is supported or contradicted by evidence in the case, the fact that the declarant was not cross-examined by the accused or interrogated by you as well as any other matter that may have a bearing on its credibility. In weighing an unsworn written statement, you are expected to utilize your common sense and your knowledge of human nature and the ways of the world.

From: Midshipman \_\_\_\_\_, U.S. Navy  
To: Presiding Officer, Brigade Honor Board

Subj: CLAIM OF WAIVER AND NOTICE OF INTENT TO PLEAD GUILTY

Ref: (a) USNAINST 1610.3F (Honor Concept)

1. I have been accused of committing the following violation(s) of the Honor Concept of the Brigade of Midshipmen:

a. In that on or about \_\_\_\_\_

---

---

---

2. I have thoroughly read reference (a) and fully understand my rights and responsibilities. In addition, my rights as an accused pursuant to reference (a) have been explained fully to me by the Midshipman Advisor and the Investigating Officer. I understand these rights include:

a. The right to a preliminary investigation of the allegation (s) by an impartial Midshipman Investigating Officer, who will present the findings of the investigation to a Brigade Honor board.

b. The right to a full hearing before the Brigade Honor Board, constituted per reference (a), to determine by a simple majority vote in closed session and by secret written ballot, whether a preponderance of evidence demonstrates that a violation occurred.

c. The right to have all proceedings and information concerning a pending or completed investigation of an honor offense kept private to the maximum extent possible. The Brigade Honor Committee and the Naval Academy will not publicly identify me or respond to external inquiries without my consent.

d. The right to free consultation. The Honor Concept provides a Midshipman Advisor to assist in my defense. If further assistance is desired, I may seek advice concerning my case from military or civilian legal counsel. Although I may seek counsel outside of the Honor Board hearing room and, at the discretion of the Presiding Officer, be allowed reasonable opportunity, in frequency and duration, to consult with such counsel during the hearing, I understand that I must present my own case.

Subj: CLAIM OF WAIVER AND NOTICE OF INTENT TO PLEAD GUILTY

e. The right to choose my midshipman advisor from among elected honor representatives.

f. The right to have three working days to prepare my case after being served with formal charges.

g. The right to be present with my Midshipman Advisor at open sessions of the Board during the hearing of my case.

h. The right to confront my accuser.

i. The right to challenge members of the Board for a reason which would prevent them from being impartial.

j. The right to examine all physical or documentary evidence in the case and to present such evidence in my own behalf.

k. The right to call witnesses, provided they are reasonably available, and to cross-examine any witness called in my case.

l. The right to remain silent. No adverse reference shall be drawn from my decision to remain silent, once a preliminary investigation has been ordered.

m. The right to make either a written or oral statement concerning the alleged offense(s) .If I elect to make a statement, I may be questioned by the Board.

3. I further understand that a finding by the Brigade Honor Board that I committed the alleged violation(s) of the Honor Concept may result in a recommendation by the Commandant of Midshipmen that I be separated from the Naval Academy.

4. I further understand that, if I am separated from the Naval Academy, I may be required to reimburse the United States for the costs associated with my advanced education.

5. I further understand that I may waive my right to a full hearing on the issue of guilt or innocence before the Brigade Honor Board. I realize that I will be required to appear before the Brigade Honor Board and that the Board is not required to accept a guilty plea from a midshipman, even if it is knowing, intelligent and voluntary. The Board has the right to fully resolve allegations of violations of the Honor Concept. I understand that if my guilty plea is not accepted, the Brigade Board will proceed as if I had entered a plea of not guilty.

Subj: CLAIM OF WAIVER AND NOTICE OF INTENT TO PLEAD GUILTY

6. I understand that a guilty plea will not preclude me from exercising any other right to which I am entitled at any stage of the processing of my case.

7. I also understand that, although my guilty plea may be considered by the Commandant and subsequent reviewing authorities as a matter in mitigation, it in no way assures that I will be retained at the Naval Academy.

8. After careful consideration of all foregoing matters, and fully understanding my rights, I voluntarily desire to plead guilty.

\_\_\_\_\_  
Accused

\_\_\_\_\_  
(Date)

Witnessed:

\_\_\_\_\_  
Midshipman Advisor

\_\_\_\_\_  
Investigating Officer